CASE NO.: LC 30/2008

IN THE LABOUR COURT OF NAMIBIA

In the matter between:

WOERMANN BROCK & CO (PTY) LTD APPLICANT

and

THE HONOURABLE MAGISTRATE

L SHAANIKA 1ST

RESPONDENT

COMPLAINANTS 1 TO 94 AS PER LIST A 2ND RESPONDENT

CORAM: DAMASEB, JP

Heard on: 17 September 2010

Delivered on: 24 September 2010

JUDGMENT

DAMASEB JP: [1] Following a strike at the workplace, the applicant on 9 November 2001 dismissed several of its employees *en masse* on the ground that they had participated in an illegal strike. Of the employees dismissed, some commenced legal proceedings against the

applicant in the district labour court (DLC) on the ground that they were unfairly dismissed. On the face of it¹ three separate complaints were filed by the employees, respectively on 23 January 2002,² 12 February 2002³ and 19 February 2002,⁴ well within the period of prescription contained in sec. 24 of the Labour Act, 6 of 1992 ("the Labour Act").⁵

[2] In the preparation and lodging of the complaints the respondents were represented by Mr. Stephanus Rukoro (a labour consultant) who, after the lodgment of the above complaints, caused to be executed and filed Forms 10 (being the authority for a representative complainant to act on behalf of "joint complainants") by a large number of persons wanting to become complainants. (I will hereafter refer to these persons as the "additional complainants".) Pleadings closed and the matter was called before the DLC. The first chairperson of the DLC who dealt with the matter was Mr. Clement Daniels who presided over proceedings on 30 October 2007. In so far as it is relevant to the issues falling for determination before this Court, two

¹ I say on the face of it because as will soon become apparent just how many complaints were actually originally lodged is in dispute.

² Under case number 22/2002 as Selma Toromba & 3 Others, the latter named in an accompanying affidavit as Delina Kavindjima, Petrus Amkongo and Paulus Festus.

³ Under case number 57/2002 as Ingrid Mengo & 19 Others, the latter duly listed an "Annexure A" to the complaint "FormNo.2" of Rule 3 of the Rules of the DLC.

⁴ Under case number 48/2002 as Josia Haukambe & 19 Others, the latter duly listed in an 'Annexure A' to the complaint 'Form No.2' of Rule 3 of the Rules of the DLC.

[&]quot;Notwithstanding the provisions of any other law to the contrary, <u>no proceedings shall be instituted</u> in the Labour Court <u>or any complaint lodged with any district labour court after the expiration of a period of 12 months</u> as from the date on which the cause of action has arisen or the contravention or failure in question has taken place or from the date on which the party instituting such proceedings or lodging such complaint has become or could reasonably have become aware of such cause of action or contravention or failure, as the case may be, except with the approval of the Labour Court or district labour court, as the case may be, on good cause shown." (My underlining)

issues arose before Mr. Daniels: the status of the Form 10 statements and the consolidation of the separate complaints. The latter is in the present context uncontroversial. Mr. Daniels made the following entry in that respect:

"The complaints have been consolidated on 11 April 2002 by the Chairperson, Mr. L Hangalo. It is maybe just for this court to clearly indicate that the complaints have been consolidated under DLC case No. 57/2002 as Selma Toromba and Others v Woermann Brock and Company (Pty) Ltd".

- [3] It is the first of the two issues that has led to the present proceedings before me in which the applicant by "Notice of Motion for Review" dated 19 august 2008 -seeks the review and setting aside of the following decisions taken on 7 July 2002 by the 1st respondent, then presiding as chairperson:
 - "1. The ruling by the first respondent in the District Labour Court, case number 57/2002 on 7 July 2008 that the unnamed complainants numbers 5, 7, 8, 10, 13-17, 19, 20, 22-25, 30-34, 38, 41, 43, 45, 46, 48-51, 53, 56, 60, 61, 63-65, 67-71, 73, 75-77, 80-86, 89, 91, 94 in list A have filed valid complaints to be heard under case number 57/2002 on 9 July 2008.
- 2. The ruling that the unnamed complainants numbers 5, 7, 8, 10, 13-17, 19, 20, 22-25, 30-34, 38, 41, 43, 45, 46, 48-51, 53, 56, 60, 61, 63-65, 67-71, 73, 75-77, 80-86, 89, 91, 94 in list A are complainants in case number DLC 57/2002 to be heard on 9 July 2008.
- 3. The ruling that the proceedings in respect of deceased complainants proceed without executors having been substituted for the deceased respondents."
- [4] As is apparent, the notice of motion seeks no declarator that the complainants concerned are in law not "joint" complainants.⁶ This
- 6 Joint complaints are dealt with in Rule 13 of the Rules of the DLC:
- "13. (I) A complaint (hereinafter referred to as a joint complaint) may be filed on behalf of a group of named complainants against the same respondent or respondents.

Court is asked merely to set aside the ruling admitting them as "joint" complainants. More on this presently.

[5] On 30 October 2007 Mr. Daniels had ruled as follows:

"The filing of Form 10 statements is a requirement in a joint complaint. As indicated by Mr. Kopplinger only 3 complainants filed their Form 10 statements authorizing the representative complainant to act on their behalf. This is an essential requirement and the parties cannot agree to waive this prescription in the rules. The complainants are therefore ordered to file their Form 10 statements within 14 days from today's date."

[6] To elucidate this ruling by Mr. Daniels, Mr. Hermanus Louw, an employee of the applicant, deposed to an affidavit in these proceedings stating that the ruling related only to the 44 individuals who were "named" in the original complaints referred to in footnotes 1-3 above. What Louw implies is that at the date of hearing before Mr. Daniels, the additional complainants had not been in the contemplation of Mr. Daniels as they were not "named" in the original

to as a representative complainant) of some or all of the other complainants, <u>provided that such other</u> complainants agree thereto in writing and file the agreement with the clerk of the court (form 10) not later than the date of the hearing of the complaint.

- (3) The chairperson may, of his or her own accord or upon application by any interested party to such complaint, at any stage of the proceedings, if it is considered that the hearing of a joint complaint may prejudice the respondent or respondents, order that the complaints of all or any of the complainants represented shall be heard separately.
- (4) Each complainant represented in a joint complaint shall be deemed to have authorized the representative complainant on his or her behalf to (a) call and give evidence and make submissions to the chairperson on any matter arising during the hearing of such complaint; (b) file affidavits, statements or any other documents for or during the hearing thereof; or (c) amend such complaint in respect of all or any of the several complaints or to settle or agree on arbitration of or abandon such complaint.
- (5) The chairperson may, upon application of any other complainant in a joint complaint at any stage of the proceedings and upon good cause shown, order that such other complainant's authorization to the representative complainant be rescinded and that the other complainant be permitted to pursue the complaint separately." (Emphasis supplied)

complaints as required by Rule 13(2); meaning Mr. Daniels made the order he did requiring the filing of Forms 10 only in respect of the persons "named" in the original complaints – that is to "agree thereto in writing and file the agreement with the clerk of the court (form 10) not later than the date of the hearing of the complaint".

[7] Louw then states that in November Mr. Köpplinger⁷ received:

"...a bundle of forms 10 from the legal practitioners for the respondent and without checking assumed it related only to the initial 44 complainants but prior to the hearing of 7 July 2008 discovered that the forms 10 delivered were for a great number of complainants who were not named in any of the complaint forms. He also found that 14 of the complainants named in the complaint forms no forms 10 had been filed. This was raised by Adv Dicks who appeared on behalf of the applicant at the first day of the hearing in an application to dismiss. Upon the point of the missing forms 10 and extra forms 10 being raised, a further bundle of forms 10 was handed to Mr. Kopplinger by the legal practitioner for the respondents. This was a handwritten bundle of forms 10 dated during July 2002. This discrepancy relating to the forms 10 resulted in a big exercise by the parties and the first respondent in identifying the true complainants before the District Labour Court. Further argument by Adv Dicks on the application to dismiss followed. The proceedings were adjourned by the first respondent to the afternoon of 7 July 2008. Upon resumption of the hearing she presented a list of complainants she had prepared, annexure "A" hereto. This list contains the names of at least 50 people who had not filed complaints or

⁷ Who was then the legal practitioner of record of the applicant.

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whose names were included in a complaint form. Prior to the adjournment, during the process of verification, we found that there were still 5 named complainants for whom no forms 10 had been filed. Further, the new bundle of hand written forms 10 included a further 9 complainants for whom no forms 10 had been filed at any stage and who were also not named in the complaint forms. On 8 July 2008 during the application for a postponement Mr. Kopplinger argued the points raised above. As far as I could understood, the ruling by the first respondent was that the extra persons on list "A" form part of the proceedings as they became part of the proceedings with the consolidation application in April 2002. I am advised that this is not possible as the names of these extra people were not even known to the applicant or Mr. Kopplinger at the time, April 2002. I am further advised that the unnamed complainants now added in list 'A' cannot possibly become complainants as they did not lodge complaints within the 12 month period prescribed in terms of section 24 of the act. Furthermore, I am advised that any claim or complaint prescribes within a period of three years in terms of the prescription act. I am further advised that the mere lodging of forms 10 for the unnamed complainants cannot constitute the lodging of a complaint as is defined in the rules of the District Labour Court, and that the complaints of the unnamed complainants have long become prescribed."

- [8] That the additional complainants are in law not entitled to participate as complainants is strenuously denied by the second respondent, as is the factual allegation that the additional complainants had not filed their Forms 10 timeously, or that the mere filing thereof without the additional complainants being named as complainants on Form 2 did not entitle them to be "joint" complainants as contemplated in Rule 13(2).
- [9] Selma Toromba who deposed to an affidavit in opposition to the relief sought herein avers that the additional complainants had properly become "joint" complainants by executing Forms 10. She

maintains that the Forms 10 appearing at pages 31-113 of the paginated record were signed and lodged in July 2002, i.e. before the date of hearing. She states:

"Further, I wish to add that some of the 50 people being referred to herein did not file separate complaints and <u>their names were not mentioned in the complaint forms as they were joined at a later stage after the lodging of the complaint."</u> (Underlining supplied)

[10] Rukoro who represented the second respondent when the complaints were filed in the DLC deposed to an affidavit in which he states that:

"during 2002 I represented the respondents whose Form 10's are in dispute in the District Labour Court as reflected in the record from pages 31 – 113 inclusive. They filed a joint complaint against the applicant. During or about July 2002, I completed, served and filed the Forms 10 in the joint complaint of Selma Toromba and others against the current applicant and the complainants signed the Forms 10 in my presence respectively."

[11] Messrs Köpplinger and Hermanus in reply take issue with the allegations by Rukoro labeling them as fabrications. Hermanus denies, supported by one Dudley Fourie also in the employ of the applicant, that Rukoro ever filed any Forms 10 on the applicant.

[12] On the papers there is a factual dispute between the parties on whether or not the Forms 10 were timeously filed and a difference of opinion on - assuming they were filed before the date of hearing-whether they constitute a valid inclusion of the additional complainants as "joint" complainants within the meaning of Rule 13 (2). I am alive

to the fact that in the way the point had crystallized after argument, the narrow question that falls for decision is whether the fact that the additional complainants had not been named in the original complaints but were only added by means of the Forms 10 is in breach of Rule 13(2). It is a question that involves a consideration of the proper construction to be placed on the Labour Act and the DLC Rules, to determine the true intend of the law-giver before coming down in favour of one or other view. It could thus be said that its disposal as a law point might lead to the disposal of the claims of close to half of the complainants. ⁸The case as a whole is however is not resolved by so doing but only gives the respondents an entitlement to appeal with the potential to protract the proceedings.

[13] The question is, should this Court resolve those disputes at this point in time when the case had not yet come to an end in the DLC? As I have already pointed out, in the way the relief is framed in the notice of motion, this Court is not asked to declare that the additional complainants are in breach of Rule 13(2) and are therefore not "joint" complainants within the meaning of that Rule. The net result of all that is that what this Court is asked to do is to find, first, that based on Rule 13 (2) the ruling by the 1st respondent admitting the additional complainants as "joint" complainants under case No. 57/2002 was not competent, and because of that, secondly, to review and set aside the ruling on that issue. As for the dispute on the timeous filing of the

⁸ Waldhaus v Additional Magistrate, Johannesburg, 1959(3) 113 at 119A.

Forms 10, that has become academic considering the way in which the issue has crystallized in argument: the applicant's position now is that even assuming that the Forms 10 were executed timeously by the additional complainants, they cannot in law be "joint" complainants because they were not so "named" in the original Form 2 complaints.

[14] In the view that I take of the case, I need not decide whether or not the additional complainants were improperly admitted as joint complainants. In my judgment, the 1st respondent's ruling on that issue would become of no practical effect if, as I do, I find that there was a reviewable gross irregularity committed by her in the manner she conducted the hearing that led to the decision being made.

The law on piecemeal review

[15] The applicant wants this Court to review proceedings still pending in the DLC. The legal position has been stated as follows:

"While a superior court having jurisdiction in review or appeal will be slow to exercise any power, whether by mandamus or otherwise, upon the unterminated course of proceedings in a court below, it certainly has the power to do so, and will do so in rare cases where grave injustice might otherwise result or where justice might not by other means be attained In general, however it will hesitate to intervene, especially having regard to the effect of such procedure upon the continuity of proceedings in the court below, and to the fact that redress by means of review or appeal will ordinarily be available." (My underlining for emphasis)

[16] It is important for me to bear in mind the impact on the continuation of this matter in the court below should I intervene by reviewing and setting aside the rulings that are impugned in this Court.

⁹ Gardiner and Lansdown (6th ed., vol.I p.750), cited with approval in Waldhaus, supra at 120 A-B.

The cause of action upon which the respondents seek relief in the DLC arose in November 2001 –close to 9 years ago. The trial never got off to a start because of several postponements the reason for which is not properly explained by either party- but certainly also on account of the present dispute which commenced in 2008.

- [17] The 1st respondent made a ruling that the additional complainants be treated as being properly before court as "joint" complainants- in effect rejecting the applicant's objection that such persons not be so treated because they were not "named" in the original Form 2 complaints. As trier of fact and law, the 1st respondent invited to find that certain individuals had no right to participate in the proceedings because they had not properly lodged complaints but she took the opposite view. Had the 1st respondent properly performed her judicial function, the applicant's complaint would amount to no more than an objection that the chairperson in the exercise of her judicial power gave a wrong decision. The normal remedy against such a wrong decision is appeal after the completion of the proceedings: See *Waldhaus*, *supra* at 119D. At all events, the applicant seeks no declaration of rights and nothing further needs to be said at this stage.
- [18] What I am able to discern from the record of the proceeding before 1st respondent on 7 July 2008 is the following:¹⁰
 - (a) Mr. Dicks acting for the applicant submitted that the additional complainants are not properly before court as "joint" complainants since they had not been "named" as complainants in the original Form 2 claims; and their simply filing Forms 10- did not qualify them as "joint" complainants. Mr. Dicks also submitted that persons who, on the version submitted by Mr. Tjitemisa acting on behalf

of the complainants, had since died can't have their claims entertained unless an executor had been appointed to act in their place – a proposition with which (the record shows) Mr. Tjitemisa sensibly agreed, adding that he did not act on behalf of those deceased persons and that in respect of them the law must be complied with.¹¹ Mr. Tjitemisa however disagreed with the proposition that persons who had not been "named" in the original Form 2 claims but had subsequently executed Forms 10, are barred from participating as complainants. He insisted that the additional complainants were properly before court as "joint" complainants.

- (b) The 1st respondent made clear in comments attributed to her in the record that she agreed that in respect of persons since deceased, executors would have to be appointed in their place if their claims were to be pursued.¹²
- (c) In respect of the legal question whether persons who had only completed Forms 10 (the additional complainants) should be considered as "joint" complainants, the 1st respondent adopted a rather unconventional approach. She arrogated to herself the function of determining, by reference it appears to the various documents that were then on the court file who were the actual complainants in the proceeding before her. She clearly proceeded from the assumption that Mr. Dicks' submission that merely filing Forms 10 was not sufficient to be a joint complainant was not correct and that the contrary position contended for by Mr. Tjitemisa was the correct one. She stood the matter down and withdrew to chambers and (unsolicited) compiled a list herself (in the absence and without the input of the parties and their counsel) and upon return informed the parties that she had

¹¹ Rule 52(3) of the Magistrates Court Rules: "If a party dies or becomes incompetent to continue an action, the action shall thereby be stayed until such time as an executor, trustee, guardian or other competent person has been appointed in his place or until such incompetence shall cease to exist."

¹² See record page 502 at lines 10 and 20; and page 512 lines 10-20.

¹³ This appears at page 507 onward of the paginated record. That part of the record is shown as the "Ruling" and runs up to page 538 of the paginated record.

¹⁴ Which she describes as a "shambles": vide pages 490-491 of the paginated record.

compiled the list of the persons who would be considered as complainants in the consolidated complaint. She started reading out names, in the process making some comments suggesting that she was herself confused¹⁵ about what was happening. The following is attributed to the 1St respondent: ¹⁶

"I want to distribute this list to the parties and can somebody just help me? Now, when I went through the Form 10 is that these were on the record parties that the Complainant, *that I believe* ¹⁷ *they* are part of the proceedings as we speak now and they rank from number 1 to 92.18 I have a problem and that will be, I do not know, Mr. Jeff needs to for his client need to give me an indication of the signature. As I was typing with the assistance of my secretary, we couldn't make out the signature on this Form 10 since July 2002 and you will see there are about five which is July, which is part of those parties that were consolidated and I couldn't make out who their names are. Maybe you can also circulate to the other parties. But that in itself does not mean that they are excluded from the very proceedings. So I couldn't make out who the names of those parties are and this is why I have never typed them in, in the very list that I've circulated to be the Complainants." (Mv underlining for emphasis)

(That the entire procedure was riddled with confusion is so obvious from the record and I do not find it necessary to deal with all the examples pointing to such confusion and the 1st respondent's misunderstanding of her proper role as a judicial officer. I will presently cite two more examples pointing to the confusion.)

(d) After the 1st respondent's ruling that the additional

¹⁵ Although interestingly she suggested herself that she was not confused by the enterprise she embarked upon unsolicited.

¹⁶ At page 510-511 of the paginated record.

¹⁷ It is not apparent from the record on what that belief is based and what factors she took into account in private in her chambers.

¹⁸ This is the number she came to from the list prepared by her.

complainants be treated as "joint" complainants, the applicant's counsel applied for a postponement to allow them to investigate the circumstances of the additional complainants and to prepare for trial. That was refused by the 1st respondent compelling the applicant to approach this Court on an urgent basis to stay the proceeding pending review of the ruling affecting the additional complainants. On 9 July 2008 this Court granted the applicant an order staying the proceedings before 1st respondent pending the review and setting aside of the decisions she took.19 The two decisions were identified as (i) the one including the additional complainants as "joint" complainants as contemplated by Rule 13(2), and (ii) the one, as alleged, that deceased persons' claims could be entertained without the intervention of executors.

[19] If one considers the record of the DLC proceedings and the affidavits of the parties in the present review proceeding, there is confusion about who actually are the complainants (either original or additional).²⁰ That there was a very serious confusion created by the

¹⁹ The rule was confirmed on 8 August 2008.

²⁰ For example, at p.13 of the record "Annexure A" lists 20 people, including the representative complainant and thereon are notes made, I am not told by whom, suggesting that some of those listed "did not sign"- again I am not told what they did not sign and the significance of that. The fact that certain documents are not signed is mentioned repeatedly by the chairperson during the course of her settling in court the list of complainants. Selma Toromba deposes in her affidavit that 4 complaints were filed originally (vide Para. 4 of her affidavit), while the applicant maintains only 3 were filed. There is also some uncertainty about which of the complainants, originally named in the complaints or only purportedly joined through Forms 10, are since deceased-yet in my decision I have to specify who is to be treated as a complainant and who not.

procedure adopted by the 1st respondent is all too apparent. It appears even the parties cannot agree on what exactly transpired. For example, at paragraphs 16-17 of the founding affidavit in support of the present review application, it is alleged as follows by Louw on behalf of the applicant, by reference to what transpired before the 1st respondent on 7 July 2008:

"Prior to the adjournment, during the process of verification, we found that there were still 5 named complainants for whom no forms 10 had been filed. Further, the new bundle of hand written forms 10 included a further 9 complainants for whom no forms 10 had been filed at any stage and who were also not named in the complaint forms. In the list prepared by the first respondent, annexure "A" hereto, these 5 parties for who no forms 10 had been filed and the 9 new parties were included."

[20] Toromba's answer to this allegation on behalf of the respondents is to state that she bears no knowledge of those allegations and therefore cannot deny or admit it. One is left to wonder if the parties attended the same hearing! At page 490-491 of the paginated record the chairperson gives us an indication of the confusion that reigned at the hearing when she, in a moment of exasperation, stated that:

"what maybe the Court can do is because the whole thing things are just in shambles, the whole court record to me is not in the position to give me some right directive, is to sort out those forms and then be able to start as from these forms ..."

[21] In my view such confusion can only properly be clarified by the trial court. There is a genuine concern on my part about taking a decision at this juncture that may bind the court below in ways that will make it impossible for the parties to clarify and then rectify with the

court below issues around the identities of the complainants.

[22] It must by now be apparent that what concerns me is not so much the decision the 1st respondent took on the Form 10-joint complainant issue, as the manner in which she took that decision. I have shown what happened and how irregular that procedure was: The 1st respondent descended into the arena by assuming the responsibility for compiling a "list" of those she felt were entitled to be treated as complainants, instead of applying her mind to the legal question raised and making a reasoned decision upholding the submission of one or the other party based on facts and evidence established by the parties. Therein lies the irregularity – sufficiently gross to justify intervention to put it right and to restore the balance between the parties.

[23] Intervention by this Court would ordinarily not be justified where a lower court performs its judicial functions properly but comes to a wrong conclusion of law. This Court however has an obligation to interfere where there has been a miscarriage of justice.²¹ I am satisfied that there was a complete miscarriage of justice in the way the 1st respondent dealt with the important legal objection that was raised by the applicant on 7 July 2008.

[24] The best way to resolve the problem is to review and set aside the

decision made by the 1st respondent rather than setting aside the proceeding which led to it being made- lest by merely setting aside the proceeding the decision stands and the court below feels obliged to give effect to it. I wish to make clear that I am not by so doing deciding in favour of the point raised by the applicant that the additional complainants are barred from participating as "joint" complainants in the proceedings under Case No. 57/2002. In fact, in the way the relief has been framed, this Court is not being asked for a declarator that the additional complainants are not joint complainants within the meaning of Rule 13 (2). I therefore specifically reserve my views on that issue and leave it to be determined by the DLC.

- [25] There is no basis at all for the relief sought in prayer 3 of the notice of motion. The 1st respondent did not make a decision adverse to the applicant on the issue whether the claims of deceased persons could be pursued without executors being substituted in compliance with Rule 52 (3) of the Rules of the Magistrates Court. Accordingly I make no order in respect of that prayer.
- [26] Before the conclusion of oral submissions the parties intimated that they wished to confer and make a joint request the Court in the light of the issues that had emerged in the course of the hearing. Following that discussion, they submitted a joint request in the following terms, duly signed by both counsel:

"By agreement between the parties the honourable court is requested as follows:

- 1. Should the honourable court decide this matter against the applicant, that the matter be remitted to the court a quo to be heard de novo, including the issue of whom the complainants are.
- 2. It is suggested that it is appropriate that the matter be heard by

a different chairperson for the following reasons:

- 2.1 The chairperson in the court a quo has become a party to the proceedings in this court.
- 2.2 Only points in limine were dealt with to date in the court a quo.
- 2.3 The court a quo did not commence hearing evidence on the merits."

[27] My shrewd suspicion is that what they intended to convey is that the 1st respondent –in the way she conducted the hearing upon the issue raised by the applicant – compromised herself by adopting a procedure that raises serious doubt concerning her role as a neutral and objective trier of fact and law. It is for that reason that I am prepared, albeit reluctantly, to sanction the course proposed by the parties in their joint request. The joint request curiously proposes that only in the event that I find against the applicant should I direct the matter to be heard *de novo* and by another magistrate. Having found that it is necessary to interfere with the manner in which the decision was taken, I consider that an even stronger reason that the 1st respondent not hear the matter when it is remitted to the court below. There would be no prejudice to any of the parties and the administration of justice would not be prejudiced thereby.

[28] Accordingly I make the following order:

- The ruling made by 1st respondent on 7 July 2008, to the effect that the persons not named in the Form 2 claims filed respectively on 23 January 2002 under case No. 23/2002; 12 February 2002 under case. No.57/2002 and 19 February 2002 under case. No. 58/2002 (and since consolidated under Case No. 57/2001), are joint complainants as contemplated in Rule 13 (2) of the Rules of the DLC solely on account of their having executed Forms 10 of the said Rules, is reviewed and set aside.
- 2. The matter is remitted to the district labour court for the district of Windhoek for the case to be heard *de novo* before a different magistrate as if the ruling by 1st respondent (referred to in Order 1 above) had not been made; and otherwise for the case to be dealt with according to law.

3.	There shall be no order as to costs.

DAMASEB, JP	
ON BEHALF OF THE APPLLICANT:	MR. P
BRAND	
INSTRUCTED BY:	NEVES LEGAL
PRACTITIONERS	
ON BEHALF OF THE RESPONDENTS:	MR. GERSON HINDA
INSTRUCTED BY: ASSOCIATES	TJITEMISA AND