



CASE NO: LC 30/11

IN THE LABOUR COURT OF NAMIBIA

In the matter between:

CLAUDIE IILEKA

1ST APPLICANT

MENESIA MUINJO

2ND APPLICANT

UMBI KARUAIHE-UPI

3RD APPLICANT

THEOFILUS KARIPI

4TH APPLICANT

and

NAMIBIAN BROADCASTING CORPORATION

1ST RESPONDENT

LABOUR COMMISSIONER

2ND RESPONDENT

MUSHITO MUKWAME

3RD RESPONDENT

LAHJA KANDONGO

4TH RESPONDENT

ALPHEUS GAWESEB

5TH RESPONDENT

GERSON KAMATUKA

6TH RESPONDENT

MBENO MURANGI

7TH RESPONDENT

DAUN JANTJE

8TH RESPONDENT

CORAM:

GEIER, AJ

Heard:

25 March 2011

Delivered:

25 March 2011

EX- TEMPORE JUDGMENT:

GEIER, A.J.:

[1]The applicants, all being members of first respondent's executive committee, by way of an urgent application, seek an order :

- a) condoning the applicants' non-compliance with the forms and service as provided for in the Rules of this Honourable Court and directing that the matter be heard as one of urgency as envisage by Rule 6 (24) of the Rules of this Honourable Court;
- b) declaring that the restructuring process by the first respondent for a new executive and divisions for management structure for the first respondent is unlawful and inconsistent with Section 34 of the Labour Act 2007, Act 11 of 2007;

together with certain additional relief essentially compelling the first respondent to comply with certain further provisions of Section 34 of the Labour Act.

[2]Although the Mr Corbett, who appears on behalf of the first respondent, *in limine* raised the issue of the failure of the applicants to comply with the requirements of Rule 26 (a) and (b), which attack had substance, I nevertheless deem it fit to exercise my discretion to hear this matter on the merits, as any delay of the possible final adjudication of this application, today, would serve no apparent purpose and would not be in the interests of justice.

[3]The applicants claim that, (pursuant to a board resolution of the first respondent, taken on 25 February 2011, and in terms of which they were informed that the first respondent had taken a resolution, on one of the options presented to it by its consultants), the executive committee of first respondent would be restructured to now comprise of 6 members only, inclusive of the Director-General.

[4] Applicants as a result formed the view that this restructuring had caused their employment to have become redundant.

[5] They reason further in support of their case for urgency:

“That should they delay in seeking relief, they may be dismissed unfairly since their positions have become redundant.”

[6] Thus they also seek certain interdictory relief restraining the first respondent from dismissing them from their employment.

[7] In such circumstances it became clear that the applicants seeking final relief had to show a clear right on which such relief should be granted.

[8] It has become apparent from the papers that applicants did not only rely in general on their right to employment but also on the rights conferred by Section 34 (1) of the Labour Act, Act No 11 of 2007.

[9] Section 31(1) states:

“If the reason for an intended dismissal is the reduction of the workforce arising from the re-organisation or transfer of the business or the discontinuance or reduction of the business for the economic or technological reasons, an employer must ...”

[10] It appears on an analysis of this section that the applicants, to be successful, at least had to show:

- (a) that there is an intended dismissal; and
- (b) that the reason therefore is the reduction of the workforce arising from either the re-organization or transfer of the business or the

discontinuance or reduction of the business of the employer for economical or technological reasons.

[11]In this regard it then becomes relevant to consider the respective allegations made by the parties in respect of these requirements.

[12]The high- watermark of the applicant's case is their fear that they might be unfairly dismissed since their positions had become redundant through the intended restructuring.

[13]This is expressly denied by the Director-General of the first respondent, who states in paragraphs 19, 20 and 22 of the answering affidavit:

"19. ... I emphasise that at no stage was it resolved by the board or, indeed has it subsequently been resolved, that the applicants or for that matter any other member of the Exco would be dismissed on the basis of the reorganisation of the executive management at the NBC. To the contrary, it is the board's position that all Exco members' including the applicants' would continue to be employed and accordingly the issue of redundancies and retrenchments does not arise.

20. The board further resolved that the current Exco would remain intact and reporting would be done in accordance with the old management structure until such time that the new positions were filled. The board further confirmed that the new chief executive office position would be filled through a fair and transparent process and with the use of external professionals to form part of the interview panel. Members of the board emphasised that the interview panel should be well balanced. I enclose a copy of the new structure of Exco as approved by the board on 25 February 2011 as "AA8". Although the project planning function had been abandoned, the incumbent has been

encouraged to indicate to me the areas where his experience and skills could be used in the NBC. Mr. Karipi is also an applicant for the position of Chief Officer: Human Capital which he previously occupied. In this regard I annex an e-mail from Mr. Karipi marked "AA9"; ...

22. *I reiterate that no decisions have been taken to retrench any one on the Exco structure or on the structure at all. In fact, after the meeting with Exco' including the applicants' on 25 February 2011 an official notice was distributed within the corporation which invited applications from the staff for the 5 vacancies in the chief officers position..."*

[14]On application of the principles as regards the approach to disputed facts in motion proceedings, as set out in *Plascon Evans Paints Ltd v van Riebeeck Paints (Pty) Ltd* 1984 (3) SA 623 A at 634E and 655 A¹, the version of the first respondent must prevail.

[15]From the first respondent's version it appears that there is no intended dismissal of the applicants by reason of the reduction of the first respondent's workforce arising from the reorganisation.

[16]In such circumstances the applicants have failed to show that there was an intended dismissal by reason of an intended reduction of the workforce arising from the intended restructuring and re-organisation of the first respondent's executive committee. The application is thus premature and the applicants have failed to show a clear or even a *prima facie* right to any of the relief sought on the bases of their right to employment and on Section 34(1) of the Labour Act 2007.

[17]Mr. Corbett strongly urged me to award the costs of this application to the first respondent in view of a number of non-disclosures made on the part of the

¹ See also: *Stellenbosch Farmers Wineries Ltd v Stellenvale Winery (Pty) Ltd* 1957 (4) SA 234 (c) at 235E -G

applicants. As I consider these alleged non-disclosures not material to the crux of this case I decline to grant the applied for cost order.

[18]In the circumstances the application cannot succeed and falls to be dismissed.

GEIER, AJ

Counsel for Applicants:

Adv S. Akweeda

Instructed by:

Sisa Namandje & Co

Counsel for First Respondent:

Adv A. Corbett

Instructed by:

Ellis Shilengudwa Inc