



**CASE NO. LCA  
04/2011**

NOT REPORTABLE

**IN THE LABOUR COURT OF NAMIBIA**

In the matter between:

**STANDARD BANK NAMIBIA  
APPELLANT**

and

**ROMEO MOUTON  
RESPONDENT**

**CORAM:** HOFF, J

Heard on: 29 July 2011

Delivered on: 29 July 2011 (*Ex tempore*)

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**LABOUR JUDGMENT**

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**HOFF, J:** [1] This is an appeal against the entire ruling made by an arbitrator on the 20<sup>th</sup> of December 2010 in respect of an application for the rescission of and an award made in favour of the respondent, on 28<sup>th</sup> of September 2010.

[2] It is common cause that the respondent worked for the appellant as a teller. On 26<sup>th</sup> May 2009, the respondent appeared in a disciplinary hearing charged *inter alia* with dishonest conduct in falsifying bank records in order to hide an apparent deficiency of nine thousand and forty eight Namibian Dollars and forty six cents (N\$9 048.46) in his cash holdings.

[3] The respondent was found guilty of dishonesty on the same day and he was subsequently dismissed. Although he was informed in a letter dated 18<sup>th</sup> June 2009, of his termination of service and that he has a right to lodge an appeal against his dismissal, respondent elected not to lodge such an appeal.

[4] On the 4<sup>th</sup> of August 2010, the respondent referred the dispute to the office of the Labour Commissioner in terms of the provisions of Section 82 (7)(a) of the Labour Act 11 of 2007. The matter was set down for 3<sup>rd</sup> September 2010 before an arbitrator. Mr August Maletzky who appeared on behalf of the respondent addressed the arbitrator and *inter alia* stated that the appellant without reason or justification, chose not to entertain the respondent's case at the disciplinary hearing and that this prompted the respondent to refer the matter to the Labour Commissioner in order to ask for reinstatement in his previous position as well as compensation for loss of income.

[5] The arbitrator thereafter made a reward on 28<sup>th</sup> of September 2010. On the 14<sup>th</sup> of October 2010, the appellant gave notice of intention to apply for rescission of the arbitrator's reward given in favor of the respondent. On 20<sup>th</sup> December 2010 the arbitrator dismissed the rescission application.

[6] Mr Philander now appears on behalf of the appellant and the respondent Mr Romeo Mouton appears in person. It was submitted by Mr Philander that having regard to the date of the dismissal as well as a date when the matter was referred to the Labour Commissioner, that the referral was out of time and that the referral has in fact prescribed.

[7] Section 86(2) of Act 11 of 2007 provides that a party may refer a dispute in terms of sub-section (1) within 6 months after the date of dismissal, if the dispute concerns a dismissal. Now in the present appeal, the dispute indeed concerns a dismissal.

[8] In terms of the provisions of section 88 of the Labour Act:

“An arbitrator who has made an award in terms of Section 86(15) may vary or rescind the award *inter alia* on the application of any party made within 30 days after the service of the award if -

(a) It was erroneously sought or erroneously made in the absence of any party affected by that award.”

[9] I am of the view that having regard to the fact that the dispute was referred to the Labour Commissioner, after the expiration of 6 months, this referral to the Labour Commissioner was out of time and has in fact prescribed in terms of Section 86(2) and that when the respondent so sought an award to be made by the Labour Commissioner, it was sought erroneously and the Labour Commissioner also erroneously made such kind of award since in terms of the provisions of Section 86(2), the Labour Commissioner had no jurisdiction, he acted *ultra vires*.

[10] As a result, the appeal succeeds and the Court makes the following order:

The ruling of the arbitrator dated 20<sup>th</sup> December 2010 as well as the award dated 28<sup>th</sup> September 2010 are hereby set aside.

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**HOFF, J**

**ON BEHALF OF THE APPELLANT:  
PHILANDER**

**MR**

**Instructed by:  
INC.**

**LORENTZ ANGULA**

**ON BEHALF OF THE RESPONDENT  
PERSON**

**IN**

**Instructed by:**