

NOT REPORTABLE CASE

NO.: LCA 75/2009

IN THE LABOUR COURT OF NAMIBIA

In the matter between:

NAMIBIA POWER CORPORATION (PTY) LTD Appellant

and

GERALD NANTINDA Respondent

CORAM: GEIER AJ

Heard on: 2011 March 04

Delivered on: 2011 March 04

RULING (*Ex Tempore*)

GEIER AJ: [1] In the circumstances of this matter, it is clear, or the parties are in agreement that the Appeal has lapsed and that it should therefore be removed from the roll.

[2] The only issue before the Court this morning is the question of costs. In terms of the Labour Act, a costs order can only be made if a party is found to be frivolous and vexatious.

[3] In the present circumstances, it would appear that this matter was set down for

hearing in September last year. Appellant thereafter duly filed Heads of Argument on the 17th of February, to which the Respondent then filed its heads on the 25th of February. That was shortly before the date of set down which was the 4th of March 2011. In the Respondent's Heads of Argument, the crisp point was taken that the appeal had lapsed for failure of having prosecuted it within the required time.

[4] There is nothing before me that indicates that Appellant was aware before that time that this appeal had lapsed and that the further prosecution thereof or the purported prosecution thereof, was therefore done in a frivolous or vexatious manner.

[5] Furthermore, Mr Dicks refers me to Rule 17(16)(b) of the Rules of the Labour Court, in terms of which it would have become incumbent on the respondent to have disclosed the reasons for opposing the appeal in terms of the Rule. This was not done. Because this avenue was not utilized the fact that the appeal had lapsed, was not drawn to the Appellant's attention much earlier.

[6] In the circumstances and on the information available and evidence before this Court, a case for a costs order has not been made out and I accordingly decline to make such Order.

[7] The matter is hereby removed from the roll.

GEIER AJ

COUNSEL ON BEHALF OF THE APPELLANT:

Adv. G Dicks

Instructed by: Fisher, Quarmby & Pfeiffer

COUNSEL ON BEHALF OF THE RESPONDENT:

Mr E E Coetzee

Instructed by: Tjitemisa & Associates