



HIGH COURT OF NAMIBIA MAIN DIVISION, WINDHOEK

JUDGMENT

Case no: LC 121/2014

In the matter between:

SAREL FRANSCOIS KARSTEN

APPLICANT

and

THE LABOUR COMMISSIONER

1ST RESPONDENT

A.A. HAGEN N.O.

2ND RESPONDENT

NAMDEB DIAMOND CORPORATION (PTY) LTD

3RD RESPONDENT

THE MINISTER OF LABOUR

4TH RESPONDENT

Neutral citation: *Kartsen vs The Labour Commissioner and 3 others (LC 121/2014)*
[2016] NALCMD 42 (26 October 2016)

Coram: Miller AJ

Heard: 30 January 2015

Delivered: 26 October 2016

Summary: This is a review application brought by the applicant in this matter in terms of Section 117(1)(c) of the Labour Act, 2007 and Rule 6 of the Labour Court Rules. The applicant in this matter seeks a review of a decision made by the Labour Commissioner and an order for the Court to review the decision taken by the Labour Commissioner not to condone the non-compliance with Section 86(2)(a) of the Labour Act.

Court held: Nothing in Section 86 of the Labour Act gives a conciliator or an arbitrator the power to extend the time period stipulated in the said section, and if condonation has to be given in terms of section 86(2)(a), such condonation or extension of time would be ultra vires.

Court held: Arbitration proceedings are Tribunals in terms of Article 12 of the Namibian Constitution and any decision or award made by an arbitrator is binding and makes the matter finalized.

Court held: If the applicant was dissatisfied with the decision taken by the second respondent, it was open to him to seek review of that decision by the labour Court, which did not happen.

ORDER

1. The application is dismissed.
2. There shall be no orders as to costs.

JUDGMENT

MILLER AJ

[1] The applicant was dismissed from the third respondent's employment on charges of absenteeism on March 6 March 2013. The applicant appealed his dismissal to the Disciplinary Review Committee of the third respondent. The Committee dismissed the appeal and upheld the dismissal on 15 May 2013.

[2] A dispute was lodged with the Labour Commissioner by the applicant and on 28 January 2014, the dispute was set down for conciliation and arbitration before the second respondent.

[3] On that day, the second respondent ruled that the dispute was referred outside the time period stipulated by s 86(2)(a) and she dismissed the dispute, in which written reasons followed on the 27th of February 2014.

[4] In March 2014, the applicant referred the same dispute to the first respondent again, along with an application for the late referral of the dispute. The first respondent on the 17th of July 2014 refused to accept the application, in which in short she stated that the matter has already been disposed of and could amount to retrospective referral.

[5] On the 18th of August 2014, the applicant brought an application in terms of Section 117(1)(c) of the Labour Act, 2007 read with Rule 6 of the Rules of the Labour Court Rules against the decision taken on the 17th of July 2014 by the first respondent, namely on the following grounds:

5.1. For none acceptance of the referral of dispute dated 7 March 2014;

5.2. Failure to condone the non-compliance of Section 86(2)(a) of the Labour Act, 2007.

[6] The third respondent submitted heads of arguments, which in short, the third respondent submits that the provisions of Section 86(2) are peremptory and Section 86 makes no provisions for condonation for the late filing of a dispute.

[7] I must agree with the third respondent. Nothing in Section 86 of the Labour Act gives a conciliator or an arbitrator the power to extend the time period stipulated in the said section, and if condonation has to be given in terms of section 86(2)(a), such condonation or extension of time would be ultra vires.

[8] In the matter before me I am called upon to decide on a decision made by the Labour Commissioner (first respondent) in which he refused to accept the referral of the dispute dated 7 March 2014. The referral made by the applicant was on the same facts of a matter which was already decided upon and disposed of on the 27th of February 2014.

[9] Arbitration proceedings are Tribunals in terms of Article 12 of the Namibian Constitution and any decision or award made by an arbitrator is binding and makes the matter finalized. One cannot come again to the Labour Commissioner to have the same matter, with the same facts referred for a dispute.

[10] The award given on the 17th of July by the first respondent is in my view correct. If the applicant was dissatisfied with the decision taken by the second respondent, it was open to him to seek review of that decision by the labour Court, which did not happen.

[11] The decision of the second respondent is valid and binding upon the parties, unless it is reviewed and set aside by the Labour Court. In those circumstances, I make the following orders:

3. The application is dismissed.
4. There shall be no orders as to costs.

MILLER, ACTING

APPEARANCES:

APPLICANT:

A. Heydenreich

INSTRUCTED BY

De Beer Law Chambers

THIRD RESPONDENT:

G. DICKS

INSTRUCTED BY:

Kopplinger Boltman, Windhoek