



## LABOUR COURT OF NAMIBIA MAIN DIVISION, WINDHOEK

## JUDGMENT

Case no: LCA 6/2015

In the matter between:

**BOB T TJIUMA****APPELLANT**

and

**MEATCO NAMIBIA****FIRST RESPONDENT****ARBITRATOR N NIKANOR****SECOND RESPONDENT**

**Neutral citation:** *Tjiuma v Meatco Namibia* (LCA 6/2015) [2017] NALCMD 6 (16 February 2017)

**Coram:** PARKER AJ

**Heard:** 18 November 2016

**Delivered:** 16 February 2017

**Flynote:** Labour law – Appeal – Application to reinstate appeal – Where an appeal which has been noted has lapsed *ex lege* in terms of the Labour Court Rules, rule 17(25) for want of prosecution there is no appeal which the court may reinstate – Consequently, an application to reinstate appeal is dismissed.

**Summary:** Labour law – Appeal – Application to reinstate appeal – Where an appeal which has been noted has lapsed *ex lege* in terms of the Labour Court Rules, rule 17(25) for want of prosecution there is no appeal which the court may reinstate –

Applicant (appellant) noted an appeal but failed or refused to prosecute it within 90 days of noting appeal – Court found that for want of prosecution the appeal lapsed *ex lege* – Court concluded that there was no appeal to reinstate – Consequently, court dismissed the application.

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### ORDER

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The application is dismissed, and there is no order as to costs.

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### JUDGMENT

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PARKER AJ:

[1] The applicant (appellant in the appeal), represented by Mr Coetzee as counsel has brought an application by notice of motion to reinstate the appeal noted under case no LCA 6/2015. The first respondent employer, has moved to reject the application, and it is represented by Mr Philander.

[2] The award which the applicant attacks by appeal was made under case no CRWK 269-13 by the arbitrator on 30 December 2014. It is not disputed that applicant received the award on 15 January 2015. Applicant (appellant in the appeal) desired to appeal against the arbitrator's award; and so, he noted an appeal on 11 February 2015 within the time limit prescribed by s 89 of the Labour Act 11 of 2007, as Mr Coetzee submitted. The first respondent employer delivered its notice to oppose the appeal in terms of rule 17(16) of the Labour Court Rules on the applicant (appellant) on 15 July 2015. In that event; in terms of the peremptory provisions of rule 17(17), the applicant (appellant in the appeal) should have 'on five days' notice to all other parties' applied to the registrar on Form 5' 'to assign a date for the hearing of the appeal'. According to rule 17(19), on receipt of an application, referred to in subrule (17) (of rule 17), by the registrar from the appellant, 'the appeal is deemed to have been duly prosecuted'.

[3] Furthermore, the peremptory provisions of rule 17(25) are that '[A]n appeal to which rule 17(25) are that '[A]n appeal to which this rule (ie rule 17) applies must be prosecuted within 90 days after the noting of such appeal, and unless so prosecuted it is deemed to have lapsed'.

[4] On the facts of the case, applicant (appellant) should have prosecuted the appeal within 90 days from 11 February 2015.

[5] The applicant (appellant) applied by notice in terms of rule 17(17) on 15 June 2016 which is by far out of time: the applicant (appellant) sought to prosecute the appeal some 16 months after noting the appeal. It follows that the applicant (appellant) has not prosecuted the appeal, within the meaning of subrule (19), read with subrule (25), of rule 17 of the Labour Court Rules. Consequently, the appeal has lapsed *ex lege* (see rule 17(25); and no application has been made to the court to condone applicant's failure or refusal to comply with subrule 17, read with subrule (25), of rule 17, even if the court can condone the non-compliance. The result is that, as a matter of law and logic, there is no appeal before the court which the court may re-instate upon application of the applicant (appellant).

[6] In the result, the application is dismissed, and there is no order as to costs.

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C Parker  
Acting Judge

## APPEARANCES

APPELLANT: E E Coetzee  
Of Tjitemisa & Associates, Windhoek

FIRST RESPONDENT: R Philander  
Of ENSAfrica Namibia (Incorporated as LorentzAngula  
Inc.), Windhoek