

NOT REPORTABLE

REPUBLIC OF NAMIBIA



LABOUR COURT OF NAMIBIA MAIN DIVISION, WINDHOEK

JUDGMENT (EX TEMPORE)

Case No: HC-MD-LAB-AAP-AAA-2018/00012

In the matter between:

DORO! NAWAS CONSERVANCY

APPELLANT

and

CECIL GANEB

FIRST RESPONDENT

LABOUR COMMISSIONER

SECOND RESPONDENT

Neutral citation: *Doro! Nawas Conservancy v Ganeb* (HC-MD-LAB-AAP-AAA-2018/00012) [2018] NALCMD 21 (10 August 2018)

Coram: UNENGU, AJ

Heard: 10 August 2018

Delivered: 10 August 2018

Flynote: Labour appeal – Appeal against an arbitration award – Appeal noted out of time with condonation application filed – Notice of appeal containing no questions of

law and grounds of appeal – Failure of same fatal to the appeal, therefore, the appeal is struck from the roll.

Summary: This is an appeal against the arbitration award issued by the arbitrator on 4 October 2017, in favour of the respondent. The appeal was filed out of time but condonation of such was applied for. However, the problem with the appeal is that it lacks questions of law supported by grounds of appeal as provided for in s 89(1)(a) of the Labour Act. That being the case, there is therefore no proper appeal before court and as such, the matter is struck from the roll.

ORDER

The appeal is struck from the roll due to non-compliance with the provisions of s 89(1)(a) of the Labour Act read with Rule 17 of the High Court Rules.

JUDGMENT (EX TEMPORE)

UNENGU, AJ:

[1] This is an appeal against an arbitration award issued by the arbitrator Kleafas Gaingob on 4 October 2016. There were other previous awards made in favour of the respondent by the same arbitrator which are not relevant to the present appeal.

[2] This award, however, was also varied by the arbitrator to correct obvious errors made therein in respect of the date of payment of the money as “no later than 4 November 2017” instead of 4 November 2016 and the date of issue of the arbitral

award, namely 4 October 2017 instead of 4 October 2016. This was done on 11 October 2017, seven days after the award was issued.

[3] It is clear from the papers filed that the notice of appeal was filed out of time. However, simultaneously with the notice of appeal, an application for condonation for the late filing of the notice to appeal the award, supported by an affidavit deposed to by Mr Christopher Munwela, a Deputy Director in the Ministry of Environment assigned for the northern regions was filed explaining the cause of the delay in filing the notice of appeal timeously.

[4] Before considering the condonation application for the late filing of the notice to appeal, I want first to ascertain whether or not there is a proper appeal by the appellant before court.

[5] Appeals against arbitration awards are provided for in Section 89 (1) (a) of the Labour Act¹ which reads as follow:

'89 (1) A party to a dispute may appeal to the Labour Court against an arbitrator's award made in terms of section 86 –

(a) on any question of law alone'.

[6] In subsection (2) of s 89 it is provided that a party to a dispute who wishes to appeal against an arbitrator's award in terms of subsection (1) must note an appeal in accordance with the Rules of the High Court within 30 days after the award being served on the party.

[7] Now we know that the appeal has not been noted within 30 days after the award was served on the appellant, therefore, the appellant has to apply for condonation for the late filing of the notice of appeal.

¹ Act 11 of 2007

[8] There is another problem with the appeal for it does not comply with rule 17 of the Labour Court Rules, specifically sub-rules (1)(c) and (3). Furthermore, there are no questions of law filed with the notice of appeal accompanied by grounds of appeal in compliance with s 89(1)(a) of the Act. That failure is fatal rendering the intended appeal a nullity.

[9] It is trite law that from a nullity flows nothing. That being the case, I come to the conclusion that there is no proper appeal before court, therefore, the following order is made:

The appeal is struck from the roll due to non-compliance with the provisions of s 89(1)(a) of the Labour Act read with Rule 17 of the High Court Rules.

EP Unengu
Acting Judge

APPEARANCES

APPELLANT:

U. Nakamhela

Of Nakamhela Attorneys, Windhoek

FOR THE RESPONDENT:

Non-Appearance