

**REPUBLIC OF NAMIBIA**

**REPORTABLE**



**LABOUR COURT OF NAMIBIA MAIN DIVISION, WINDHOEK**

**JUDGMENT**

Case no: HC-MD-LAB-APP-AAA-2018/00038

In the matter between:

**JAFET ANGULA**

**APPELLANT**

and

**STUTTAFORD VAN LINES**

**FIRST RESPONDENT**

**DIONYSIUS LOUW N.O:**

**SECOND RESPONDENT**

**Neutral citation:** *Angula v Stuttaford Van Lines* (HC-MD-LAB-APP-AAA-2018/00038) [2018] NALCMD 31 (27 November 2018)

**Coram:** PARKER AJ

**Heard:** 9 November 2018

**Delivered:** 27 November 2018

**Flynote:** Labour law – Unfair dismissal – Court upholding decision the dismissal was unfair – Court finding that the evidence pointed to the fact that employment relationship between employer and employee had not broken down irretrievably – Consequently, arbitrator’s decision not to reinstate employer was wrong and perverse – Court having all the facts before it and so was in as good a position as arbitrator to order reinstatement – Court confirming arbitrator’s award on compensation and severance payment.

**Summary:** Labour law – Unfair dismissal – Court upholding arbitrator’s decision that dismissal was unfair – However court finding arbitrator was wrong to decline to order reinstatement – There was no evidence that the employment relationship between employer and employee had broken down irretrievably – Arbitrator herself/himself found that fact on the evidence – Therefore his/her refusal to order reinstatement was wrong and perverse – Consequently, court entitled to interfere and put right the wrong.

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### **ORDER**

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1. The arbitrator’s decision that appellant’s dismissal was unfair is confirmed.
  2. The arbitrator’s orders in paras (b), (c), (d), and (e) of the order are confirmed.
  3. First respondent must reinstate appellant not later than 15 January 2019 in the position he held before he was unfairly dismissed.
  4. There is no order as to costs.
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### **JUDGMENT**

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PARKER AJ:

[1] The appellant was charged by first respondent (his employer) with four charges of misconduct, namely, threatening behaviour, alternatively unethical behaviour, workplace disruption, gross insubordination, and failure to comply with company policy. First respondent's first-instance disciplinary hearing body found appellant guilty as charged, and ordered his dismissal. First respondent's appeal hearing body confirmed the decision on conviction and the punishment.

[2] Appellant lodged a complaint of unfair dismissal with the Labour Commissioner. In due course, arbitration ensued. The arbitrator, second respondent, decided in case No. CRWK 923-17, 11 June 2018, that appellant's dismissal was unfair – substantively and procedurally. The arbitrator ordered first respondent to make payments to appellant, including compensation and severance payment. Appellant appeals against a part of the award, namely, the arbitrator's refusal to make an order of reinstatement.

[3] Respondents do not oppose the appeal. First respondent did not wish to oppose the appeal; and so, did not deliver to appellant notice of its intention to oppose the appeal. First respondent did not therefore deliver a statement stating the grounds on which it opposed the appeal as required by rule 17 (16) of the Labour Court Rules ('the rules'). Despite filing no notice of its intention to oppose the appeal, I requested appellant's counsel, Mr Silungwe, to move the appeal as the law requires, because absence of opposition does not entitle the appellant to judgment as if by default. Appellant should satisfy the court that good grounds exist to uphold the appeal. See *Christian v Metropolitan Life Namibia Retirement Annuity Fund* 2008 (2) NR 753 (SC), para 15.

[4] On the record, the arbitrator's findings are clear. The arbitrator found that in all reasonableness, first respondent could continue the employment relationship with appellant. Despite making such crucial finding, the arbitrator declined to make an order to reinstate appellant. There was no evidence before the arbitrator tending to establish that the employment relationship had broken down irretrievably; and more important,

appellant had prayed for reinstatement under 'The Desired Relief' in the annexure to Form LC 21 (Referral of Dispute to Conciliation and Arbitration).

[5] I accept submission by Mr Silungwe that the arbitrator erred in law when he declined to make an order to reinstate appellant. The arbitrator's decision is perverse because it is not supported by the evidence (see *Janse van Rensburg v Wilderness Air Namibia (Pty) Ltd* 2016 (2) NR 554 (SC)). That being the case the arbitrator's decision is arbitrary; and so, this court is entitled to intervene and set aside the decision. The record is clear, and so, this court stands in as good a position as the arbitrator to take a decision on reinstatement. To remit the matter to the Labour Commissioner for him to appoint an arbitrator to consider the prayer for reinstatement would not conduce to proper administration of justice. Labour disputes ought to be disposed of expeditiously (see *National Housing Enterprise v Hinda-Mbazira* 2014 (4) NR 1046 (SC)).

[6] To the credit of the arbitrator, I should say that but for the matter of his disinclination to order reinstatement, he did weigh the evidence properly and fully and arrived at correct conclusions. I therefore think I should not interfere with the order of compensation and severance payment.

[7] In the result, I order as follows:

1. The arbitrator's decision that appellant's dismissal was unfair is confirmed.
2. The arbitrator's orders in paras (b), (c), (d), and (e) of the order are confirmed.
3. First respondent must reinstate appellant not later than 15 January 2019 in the position he held before he was unfairly dismissed.
4. There is no order as to costs.

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C Parker  
Acting Judge

**APPEARANCES:****APPELLANT:**

R.Silungwe

Of Nixon Marcus Public law office, Windhoek

**FIRST AND SECOND****RESPONDENT:**

No appearance