Practice Directive 61

**IN THE LABOUR COURT OF NAMIBIA**

**(TO THE SUPREME COURT OF NAMIBIA)**

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| **Case Title:**  NAMIBIA POWER CORPORATION (PTY) LTD v MICHAEL KAAPEHI AND TWO OTHERS | | **Case No:**  HC-MD-LAB-MOT-GEN-2018/00123 |
| **Division of Court:**  LABOUR COURT (MAIN DIVISION) |
| **Heard before:**  CLAASEN, ACTING JUDGE | | **Date of hearing:**  14 MAY 2019 |
| **Date of order:**  14 MAY 2019  **Reasons delivered on:**  24 MAY 2019 |
| **Neutral citation:** *Namibia Power Corporation (Pty) Ltd v Kaapehi* HC-MD-LAB-MOT-GEN-2018/00123 NALCMD 13 (14 May 2019) | | |
| **Results on merits:**  On the merits. | | |
| **The order:**  Having heard **Mr G Dicks,** together with **Ms S Miller,** for the applicant and **Ms E Angula** together with **Mr N Katjivena**, for the first and second respondent, and having read the documents filed of record:  **IT IS ORDERED THAT:**  The application for leave to appeal is hereby refused. | | |
| **Reasons for orders:** | | |
| [1] The applicant herein is seeking leave to appeal to the Supreme Court against a judgment handed down by this court to dismiss the application for an extension of the period to prosecute an appeal, condonation for the failure to prosecute the appeal timeously and re-instatement of the appeal.  [2] The applicable test is that the applicant must satisfy the court that there are reasonable prospects of success on appeal. It is not enough to state that a reasonable possibility exists that another court will come to a different conclusion.[[1]](#footnote-1)  [3] On the facts I found that there was an unreasonable delay and the explanation of an in-experienced counsel was not sufficient. If this was the only component of the test, the court may have come to a different conclusion.  [4] The biggest hurdle that appellant had to overcome in respect of prospects of success on appeal, was the fact that the appeal had lapsed. Rule 17(25)[[2]](#footnote-2) stipulates that an appeal must be prosecuted within 90 days of being noted and unless so prosecuted is deemed to have lapsed. The effect thereof was made clear in the matter of *Tjiuma v Meatco Namibia* para 5[[3]](#footnote-3) ‘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 the application of the applicant (appellant).’ The Labour Court Act[[4]](#footnote-4) does not give the court the power to revive a matter that has lapsed.  [6] I therefore do not deviate from the reason delivered on 22 March 2019.  [5] In the result the application for leave to appeal was dismissed. | | |
| **Judge’s signature** | **Note to the parties:** | |
|  | Not applicable. | |
| **Counsel:** | | |
| **Applicant** | **Respondent** | |
| *G Dicks*  *instructed by*  *Shikongo Law Chambers* | *E Angula*  *of*  *AngulaCo Inc* | |

1. *S v Nowaseb* 2007 (2) NR 640 HC para 2. [↑](#footnote-ref-1)
2. Labour Court Rules. [↑](#footnote-ref-2)
3. (LCA 6/2015)[2017] NALCMD 6 (16 February 2017) [↑](#footnote-ref-3)
4. 11 of 2007. [↑](#footnote-ref-4)