

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

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: <i>Namibia Power Corporation (Pty) Ltd v Kaapehi</i> 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

[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 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 *Tjiuna v Meatco Namibia* para 5³ '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 Act⁴ 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
<i>G Dicks</i> <i>instructed by</i> <i>Shikongo Law Chambers</i>	<i>E Angula</i> <i>of</i> <i>AngulaCo Inc</i>

¹ *S v Nowaseb* 2007 (2) NR 640 HC para 2.

² Labour Court Rules.

³ (LCA 6/2015)[2017] NALCMD 6 (16 February 2017)

⁴ 11 of 2007.