

NOT REPORTABLE

REPUBLIC OF NAMIBIA



LABOUR COURT OF NAMIBIA MAIN DIVISION, WINDHOEK

JUDGMENT

Case No: LCA 19/2008

In the matter between:

ROSA SWARTZ

APPELLANT

and

NAVACHAB GOLD MINE

RESPONDENT

Neutral citation: *Swatz v Navachab Gold Mine* (19/2008) [2019] NALCMD 3 (5 February 2019)

Coram: UNENGU, AJ

Heard: 25 January 2019

Delivered: 5 February 2018

Flynote: Labour Law – Appeal against judgment – Notice of appeal not in accordance with Rule 19(2)(a) and (b) of the District Labour Court Rules – Application not enjoying prospects of success on appeal – Application rejected and dismissed.

Summary: Labour Law – Applicant seeking leave to appeal against the judgment of the court. Court finding no prospects of success on appeal and dismisses the application.

ORDER

The application for leave to appeal is hereby rejected and dismissed.

JUDGMENT

UNENGU, AJ:

[1] The applicant in the matter is seeking from this court leave to appeal to the Supreme Court against its judgment handed down on 27 July 2017 dismissing the applicant's appeal on the ground that the notice of appeal did not comply with the provisions of Rule 19(2)(a) and (b) of the District Labour Court Rules. This is due to the fact that the notice of appeal failed to mention which part of the judgment she was appealing against and on which points of law or of fact.

[2] The applicant had done the same in the present application. The grounds for leave to appeal set out in the application for leave are vague – in that none of the grounds raised to support the application states that the court in dismissing the appeal was wrong because the appeal was noted in accordance with the provisions of Rule 19(2)(a) and (b).

[3] Is it a concession on the part of the applicant that indeed her notice in the appeal of 31 March 2017 was defective? If so, then the court was correct to dismiss the appeal as it did.

[4] Be that as it may, the test applicable in determining whether or not to grant leave to appeal is trite. The applicant must satisfy the court that there are reasonable prospects of success on appeal. However, it is not sufficient to state only that a reasonable possibility exists that another court would reach a different conclusion¹.

[5] In both his written and oral submissions, Mr Rukoro, council for the applicant argues that the Supreme Court will come to a different conclusion than reached at by this court on the grounds set out in the notice of the application.

[6] I doubt that the Supreme Court will grant leave to appeal. To appeal what? The applicant did not file proper appeal.

[7] The applicant knows now that her appeal was not filed in accordance with the rules therefore, a nullity.

[8] Counsel wants leave from the Supreme Court to correct the non-compliance with the rules forgetting that in order to do so, she must first apply for condonation for the late filing of a proper notice of appeal and the appeal itself. She is out of time and the application for leave to appeal is silent on this aspect.

[9] That process will cause the respondent tremendous financial prejudice and suffering. It is in the best interest of both the applicant and the respondent that the dispute is brought to an end speedily.

[10] The allegations in the grounds supporting the application for leave to appeal are procedural, in my view. Applicant does not complain and allege that the outcome of the

¹ S v Novaseb 2007(2) NR 640 (HC) at (2), Shilongo v Vector Logistics (LCA 27/2012) [2014] NACMD 33 (7 August 2014).

appeal is wrong in law or fact, therefore, the Supreme Court will not come to her rescue. The appeal was not properly noted.

[11] I am inclined to agree with the sentiments expressed by Mr Dicks, counsel for the respondent in both his written heads of argument and oral submissions. His arguments support reasons in the main judgment for the dismissal of the appeal, which I still hold to be correct.

[12] The being the case, I am not persuaded by the applicant that her application enjoys prospects of success on appeal and therefore, leave cannot be granted for her to appeal the judgment.

[13] I still hold that the judgment to dismiss the appeal is correct, that the grounds raised against the judgment are devoid of substance and as such the application for leave to appeal is hereby rejected and dismissed.

[14] The application for leave to appeal is hereby rejected and dismissed.

EP Unengu
Acting Judge

APPEARANCES

APPELLANT: S Rukoro
Of Directorate of Legal Aid, Windhoek

RESPONDENT: G Dicks
Instructed by Engling, Stritter & Partners, Windhoek