

“ANNEXURE 11”
Practice Directive 61

IN THE LABOUR COURT OF NAMIBIA

Case Title: LANGER HEINRICH URANIUM (PTY) LTD AND DAVID JOHANNES GOLIATH AND ANOTHER	Case No: LC 119/2017
Heard before: HONOURABLE LADY JUSTICE CLAASEN, ACTING	Division of Court: HIGH COURT (MAIN DIVISION) Date of hearing: 14 FEBRUARY 2019 Delivered on: 14 FEBRUARY 2019
Neutral citation: <i>Langer Heinrich Uranium (Pty) Ltd v Goliath</i> (LC 119/2017) [2019] NALCMD 6 (14 February 2019)	
Results on merits: Not on the merits.	
The order: Having heard Mr Philander for the applicant and Ms Angula , for the first respondent, and having read the documents filed of record: IT IS ORDERED THAT: <ol style="list-style-type: none"> 1. This court has no jurisdiction to review and set aside the proceedings and decisions of the second respondent in terms of section 117(1)(b)(i), read with section 89(4) and (5) of the Labour Act 11, of 2007 as no award was made. 2. This court has no jurisdiction to grant the declaratory orders prayed for because it is not the only relief sought as provided for in terms of section 117(1)(d) of the Labour Act 11 of 2007. 3. The application is accordingly struck from the roll. 4. No order as to cost is made. 	
Reasons for orders:	
<p>[1] The applicant herein is a company that conducts mining operations in the Erongo region. The first respondent was employed at the said mine as a Senior Plant Protection Technician. On 21 August 2015 the services of the first respondent was terminated. This was after a disciplinary hearing was conducted. As a</p>	

result, the first respondent registered a dispute of unfair dismissal at the Office of the Labour Commissioner, which culminated in proceedings before the second respondent, being an arbitrator at the tribunal.

[2] It appears from the tribunal's record that two meetings were convened before the said arbitrator, one on 7 February 2017 and another one on 10 July 2017. The session of 10 July 2017 was stopped on account of a request by the applicant to stay the proceedings, pending a review thereof by the High Court. At the time that the proceedings were brought to a halt, the representatives were making oral submissions before the arbitrator, no evidence commenced and no award was made.

[3] The applicant approached the Labor Court for relief in the following terms:

1.1. Reviewing and setting aside the proceedings and decisions of the second respondent handed down on 10 July 2017 insofar as the following decisions are concerned:

1.1. That the applicant (the respondent in the proceedings a quo) may not raise points *in limine*;

1.2 That the dispute referred should be adjudicated upon the document filed on 16 May 2016 be reviewed and set aside.

1.3 Declaring that the referral notice by the first respondent dated 16 May 2016 was defective;

1.4 Declaring further that a complete referral notice was only served by 27 June 2016;

1.5 That the arbitration proceedings (if any) be commenced with de novo before a different arbitrator.

2. Cost of suit (if the application is opposed)

3. Further and or alternative relief.

[4] The matter was opposed by the first respondent and was set down for hearing on 14 February 2019. At the time, I directed the parties to address the court on the question of whether the Labor Court has the jurisdiction or power to hear the matter in terms of the Labour Act 11 of 2007.

[5] Counsel for the applicant submitted that the Labour Court has the necessary jurisdiction to review the matter by virtue of s. 89(4) and (5) of the Act. Counsel for the first respondent's position was that though the court may proceed to hear the case, in the context of the matter it is only an award that can be taken on review.

[6] The court struck the matter from the roll on the basis that it does not have the jurisdiction to hear the matter, in terms of the provisions of the Labour Act.

[7] The crux of the matter is that the power of the Labour Court to review matters and to grant declaratory

relief is circumscribed by the Act.

[8] As far as review power is concerned, the starting point is s 117(1)(b)(i) and (c) of the Act. As this matter relates to arbitration proceedings, section 117(1)(b)(i) finds application and has to be read with section 89(4) and (5) of the Act. The door to review under the Labour Act is open only to 'arbitration tribunal's awards.' It contemplates that an award has been made. *In casu*, the proceedings before the arbitrator were still underway and no award has been made. The defects that can be the subject of review are listed under s 89(5) and the defects relates to the making of arbitral awards.

[9] In the same vein, the power of the Labour Court to grant declaratory relief is contained in section 117(1) (d) of the Act. It subjects the granting of declaratory relief to the condition that it should be the only relief sought, which was not the case in the matter before me.

[10] For these reasons the court held that it does not have the jurisdiction to grant the relief sought by the applicant that is review and declaratory orders.

Judge's signature:	Note to the parties:
	Not applicable.
Counsel:	
Applicant	Respondent
<i>Mr R Philander</i> <i>Of</i> <i>ENS Africa (Inc as Lorenz Angula)</i>	<i>Ms E Angula</i> <i>Of</i> <i>AngulaCo Inc</i>