

REPUBLIC OF NAMIBIA



LABOUR COURT OF NAMIBIA MAIN DIVISION, WINDHOEK

EX TEMPORE JUDGMENT

In the matter between:

Case no: HC-MD-LAB-APP-AAA-2018/00048

GIDEON BOTHMA

APPELLANT

and

SWAKOPMUND URANIUM (PTY) LTD

FIRST RESPONDENT

BIATHA MOONDE

SECOND RESPONDENT

Neutral citation: *Bothma v Swakopmund Uranium (Pty) Ltd* (HC-MD-LAB-APP-AAA-2018/00048) [2019] NALCMD 9 (18 January 2019)

Coram: GEIER J

Heard: 18 January 2019

Delivered: 18 January 2019

Released: 12 March 2019

Flynote: Labour Appeal — Notice of appeal — Requirements of — Notice of appeal failing to set out the grounds of appeal as required in terms of rule 17(2) of Labour Court Rules and rule 23(2)(d) of the Rules Relating to the Conduct of Conciliation and Arbitration before the Labour Commissioner — Notice of appeal not setting out

the grounds of appeal constituting a nullity resulting in a situation that there is no appeal before the court – accordingly the appeal had to be dismissed

Summary: The facts appear from the judgment.

ORDER

1. The appeal is dismissed.
2. The matter is removed from the roll: Case regarded as finalised.

JUDGMENT

GEIER J:

[1] Rule 17(2) of the Rules of the Labour Court prescribes how an appeal contemplated by the rule is to be noted.

[2] Importantly the said rule and also Rule 23(2) (d) of the Conciliation and Arbitration rules require an appellant to set out the grounds of appeal.

[3] If one then looks at the relevant notice of appeal in this instance it appears that the appellant there raises a number of questions of law on which he rests this appeal.

[4] In this regard Justice Parker in the *Namibia Dairies (Pty) Ltd v Alfeus and Another* NR 2014(4) at page 1115 Labour Court at paragraph [8] has stated and I quote:

'In both form 11 and form LC 41 an appellant is required to set out not only the questions of law at issue but also the grounds on which the appellant relies in contending

that there is a question of law which, if the appeal court determined in the appellant's favour, should lead to the court upholding the appeal on that question of law. What the appellant has done in the instant case is essentially to tell the court that the question of law is also the ground relied on by the appellant. To say that an arbitrator has "erred in law in finding that the first respondent's dismissal was substantively unfair" does not tell anyone, including the court and the respondents, the reason why or the basis upon which the appellant contends that the arbitrator erred in law, that is, the reason why or the basis upon which the appellant has raised the question of law. See *Shilongo v Victor Logistics (Pty) Ltd* (LCA 27/2012) 2014 NALCMD 33 (7 August 2014). All that the statement in item 1 (and the rest of the items) have done is to state a conclusion of the appellant. The appellant does not tell the court the basis on which or the reason why (that is, the ground) the court should hold for the appellant as regards the question of law raised. In sum, what I see is that the question of law also doubles as grounds. That is wrong: it does not satisfy the requirements of form 11 and form LC 41.'

[5] If one then turns to the notice of appeal that has been filed in this instance, it appears that it formulates the grounds of appeal as follows:

1. The Arbitrator erred in law when she found that the Appellant was not entitled to be paid his accrued leave.

2. The Arbitrator erred in law when she found that the Appellant has forfeited his accrued leave.

3. The Arbitrator erred in law when she found that the employment contract does not bind the Respondent contractually to pay out all of Appellant accrued leave days because the employment agreement is contrary to company policy to pay the Appellant's accrued leave.

4. The Respondent acted frivolously and vexatiously in not paying the Appellant his leave days and opposing the Appellants claim.'

[6] On analysis of these grounds it appears that what appellant has done is to say that the arbitrator has erred in making the findings listed in paragraphs 1 to 4 of the notice of appeal, which averments on their own however do not tell anyone, including the court, the reasons why- or the grounds on which- and thus on what basis these averments are founded.

[7] This conclusion is reinforced by what Justice Parker said at paragraph [9] of the *Namibia Dairies* case:

‘A “ground of appeal” in terms of rule 17(2) of the Labour Court Rules and rule 23(2) (d) of the conciliation and arbitration rules connotes the basis or the reason underlining an appellant’s contention that the arbitrator erred, or misdirected himself or herself, on the law; that is, the basis upon which or the reason why the appellant has raised the point of law. The ground is, thus, the basis or the reason upon which the court should determine the question of law raised by the appellant. (See *Shilongo*).’

[8] A notice of appeal that does not meet these requirements - as the one in the present instance - is thus defective. See also: *Shilongo’s* case (LCA 27/2012) [2014] NALCMD 33 (7 August 2014), the *Namibia Dairies* case, *Langerman v Rabes, Body Works and Another* Case (LCA 46/2017) [2018] NAHCMD 07 (23 January 2018) and of course also *Standard Bank Namibia v Grace* 2011 (1) NR 321 (LC) at [8] as quoted.

[9] The further consequence of such a finding is that the notice of appeal under consideration is a nullity.

[10] The effect of this is that the appeal, which was purportedly noted, will be regarded as if it was never noted. See *Namibia Dairies* at [10] and *Langerman* at [34] to [36].

[11] All this then results in a situation as if there is no appeal before the court and the appeal accordingly falls to be dismissed.

H GEIER
Judge

APPEARANCES

APPELLANT:

S Horn

De Klerk, Horn and Coetzee, Windhoek

FIRST RESPONDENT:

G Dicks

Instructed by Köpplinger Boltman,

Windhoek