

**REPUBLIC OF NAMIBIA**



**LABOUR COURT OF NAMIBIA MAIN DIVISION, WINDHOEK**

**JUDGMENT**

Case no: HC-MD-LAB-MOT-REV-2020/00048

In the matter between:

**HILYA NGHIWETE**

**APPLICANT**

and

**NAMIBIA STUDENTS FINANCIAL ASSISTANCE  
FUND (NSFAF)**

**FIRST RESPONDENT**

**CHAIRPERSON OF THE DISCIPLINARY HEARING  
AGAINST THE APPLICANT**

**SECOND RESPONDENT**

**Neutral citation:** *Nghiwete v Namibia Students Financial Assistance Fund (NSFAF)*  
(HC-MD-LAB-MOT-REV-2020/00048) [2020] NAHCMD 6 (25 March  
2020)

**Coram:** MILLER AJ

**Heard:** 28 February 2020

**Delivered:** 25 March 2020

**Flynote:** Labour law – Urgent application – Interim interdict – Requirements for  
urgency – Financial hardship not per se a ground for urgency.

**Summary:** Applicant was employed by the first respondent and had been so employed from the inception of first respondent to 7 February 2020 – First respondent terminated the employment of the applicant, when the ongoing disciplinary hearing concerning the applicant had halted – This was caused by a request for a postponement of the disciplinary hearing by the applicant, which request the first respondent was adamant to reject, on account that the hearing had been prolonged and for the most part on account of postponements granted at the request and instance of the applicant previously on a number of occasions – The applicant launched complaint with the Labour Commissioner, wherein she essentially seeks reinstatement – She then lodged this urgent application, wherein she seeks an interim interdict, which would ultimately result in her reinstatement, pending the determination of the dispute before the Labour Commissioner – Her reliance for urgency based upon financial hardship she will endure if the urgent relief is not granted, was rejected by this Court.

*Held:* Financial hardship consequent upon a dismissal is not different for any employee in the applicant's position and does not per se render this matter urgent.

*Held:* The consequence of the relief sought by the applicant is ultimately a reinstatement, which is the same relief she seeks in the matter before the Labour Commissioner. In the circumstances, the applicant has substantial redress in due course.

*Held:* Even if the first respondent were to advertise the applicant's former position and appoint another to that position before the determination of the issues before the Labour Commissioner, it is not a given that reinstatement, if at all would be granted by the Labour Commissioner. The Labour Commissioner might even if it finds in her favour, not order re-instatement as it is clear that the employer and employee relationship might have broken down as averred by the employer, the first respondent.

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**ORDER**

1. The matter is struck from the roll and regarded finalized for lack of urgency.
2. No order is made as to costs.

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## JUDGMENT

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MILLER AJ:

Introduction:

[1] This is an application for urgent relief for an interdict in terms of s 117(1)(e) of the Labour Act, 11 of 2007. The applicant seeks the following relief:

- '1. Condoning the Applicant's non-compliance with the Rules of Court relating to service and time periods for exchanging pleadings, and to hear the matter as one of urgency as contemplated in terms of Rule 6(24) of the Rules of the Labour Court.
2. Ordering that the decision taken by the First Respondent not be implemented and should not take effect, pending the finalisation of the labour complaint instituted by the Applicant with the Labour Commissioner under case number ..... (*sic*).
3. Interdicting the First Respondent from implementing the decision communicated to the Applicant on 7 February 2020 terminating the Applicant's employment and ordering that all processes or steps taken be reversed in order to maintain the status quo in respect of the Applicant's

employment contract prior to the decision communicated to her on 7 February 2020.

4. Costs of suit against any Respondent who opposes this application.'

Background:

[2] The applicant has been an employee of the first respondent since its inception. She was suspended with benefits on 16 April 2018. The disciplinary hearing commenced on 7 May 2018. Since its commencement, the disciplinary hearing had been postponed several times, mostly at the request and instance of the applicant.

[3] On 4 January 2020, two days before the disciplinary hearing resumed, the applicant's legal practitioner, in a letter addressed to the second respondent, requested a further postponement for two months on account of the applicant's ill-health. The letter was accompanied by a sick leave certificate, indicating that the applicant had been booked-off for three months, commencing 12 December 2019.

[4] The diagnosis on the sick leave certificate was 'psychopathological', without more. The first respondent found this diagnosis to be vague, in that it was not clear whether, this diagnosis mean that: (a) that the applicant's ability to listen to testimony and give instructions as well as her ability to testify are impaired; and (b) is the diagnosis permanent or temporary.

[5] These questions in the mind of the first respondent prompted it to request a medical report from the applicant's medical practitioner, to clarify inter alia, the above issues. The report by the medical practitioner has to date not been delivered to the first respondent. On the contrary on 16 January 2020, the applicant's legal representative by letter informed the first respondent that the applicant's medical practitioner would not disclose the details of the applicant's medical condition, unless compelled by court to do so. Since its request for a detailed medical report yielded no result, the first respondent on 21 January 2020 by letter addressed to the legal practitioner of the applicant,

demanded that the applicant agree to a medical examination by a psychiatrist of the first respondent's choice. This request also fell on deaf ears.

[6] The first respondent's board, resolved on 7 February 2020 to terminate the employment of the applicant. Consequent upon the termination of her employment, the applicant instituted a complaint before the Labour Commissioner, primarily on ground that such was unfair. This matter is pending. The interim interdict is sought, pending the outcome of those proceedings.

Issues:

[7] Firstly, it is necessary that I am satisfied that the matter is indeed urgent. If urgency is established, then I have to be satisfied that the applicant has made out a case to warrant the grant of the interim interdict.

Urgency:

*Applicant's position on urgency*

[8] Relying on *Nakanyala v Inspector-General and Others* 2012 (1) NR 200 (NR) and *Sheehama v Inspector-General, Namibian Police* 2006 (1) NR 106 (HC) argued that:

- (a) Should the interim interdict not be granted by this court, the termination of her employment would subsist? This means that, the first respondent could advertise her former position and appoint someone else, which would render her review application academic, as she seeks an order for re-instatement in that application. She thus is of the view that she has substantial redress in due course.

- (b) Further, if the interim relief is not granted on an urgent basis, she would suffer financial hardship, in that she could inter alia lose her life policies and run into arrears with the mortgage bond over her immovable property.

First respondent's position on urgency:

[9] The first respondent is of the view that the applicant's urgent application for an interim interdict is primarily premised on the financial hardships she would suffer if the urgent relief as sought is not granted. It is the first respondent's position that, financial hardships do not per se render a matter urgent. As financial hardship is the concern of every employee whose employment had been terminated, even those who challenge such termination on ground that same was unfair or sanctioned by law. The first respondent relied on a number of judgments for this position<sup>1</sup>.

Applicable legal principles and application to facts:

[10] Rule 6(12) of the Labour Court Rules provides that -

'In every affidavit filed in support of an application brought under subrule (24), the applicant must set forth explicitly -

- (a) the circumstances which he or she avers render the matter urgent;
- (b) the reasons why he or she could not be afforded substantial redress at a hearing in due course.'

[11] Financial loss or any other consequential hardships if a dismissed employee is not immediately re-instated, does not per se constitute a ground of urgency, as that is generally the concern of every employee in that position<sup>2</sup>.

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<sup>1</sup> *Beukes and Others v National Housing Enterprise* 2007 (1) NR 142 (LC), *Ludick v Samca Tiles (Pty) Ltd* 1993 (2) SA 197 (B) at 199 I-J.

<sup>2</sup> *Beukes and Others v National Housing Enterprise* 2007 (1) NR 142 (LC), para. 7; *Negongo v The Secretary to Cabinet* (LC 56/2015) [2015] NALCMD 10 (29 April 2015) para 58; and *Tjipangandjara v Namibia Water Corporation (Pty) Ltd* 2015 (4) NR 1116 (LC).

[12] Financial hardship consequent upon a dismissal is not a different result for any employee in the Applicant's position and does not per se render this matter urgent.

[13] I will remain unpersuaded, that the applicant has made out a case that she would not be afforded substantial redress in due course. It is open to the Labour Commissioner to either re-instate the applicant or to award her such damages as she has suffered as a result of her dismissal.

[14] Even is the first respondent were to advertise the applicant's former position and appoint another to that position before the determination of the issues before the Labour Commissioner such are issues to be determined by the Labour Commissioner.

[15] I am of the view that the applicant has not made out a case for the relief she seeks.

Conclusion:

[16] In the result, the matter is struck from the roll and regarded finalized for lack of urgency and no order is made as to costs.

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P J Miller  
Acting Judge

## APPEARANCE:

APPLICANT: S NAMANDJE (with him N T NDAITWAH)  
Of Sisa Namandje & Co. Inc., Windhoek

FIRST RESPONDENT: G DICKS (with him M J VERMEULEN)  
Instructed by Ellis Shilengudwa Inc., Windhoek