

REPUBLIC OF NAMIBIA



LABOUR COURT OF NAMIBIA NORTHERN LOCAL DIVISION, OSHAKATI

JUDGMENT

In the matter between:  
2021/00001

Case no: HC-NLD-LAB-APP-AAA-

**SAVO NUTS PRIVATE SCHOOL**

**APPELLANT**

and

**RUPHI MAGONDA**

**RESPONDENT**

**Neutral citation:** *Savo Nuts Private School v Magonda* (HC-NLD-LAB-APP-AAA-2021/00001) [2021] NALCNLD 1 (21 June 2021)

**Coram:** SMALL AJ

**Heard:** 8 and 14 June 2021

**Delivered:** 21 June 2021

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**ORDER**

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1. The appeal has lapsed and is accordingly struck from the roll.

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## JUDGMENT

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SMALL AJ:

[1] The appellant, in this labour appeal, filed a notice appealing against one of the orders that required it to compensate the respondent two monthly salaries of N\$ 11 000.00 and one month notice equal to N\$ 5 500.00 totalling to an amount of N\$ 16 500. The aforesaid order is part of an award made on 8 February 2021.

[2] The Labour Court Rules in Rule 1 provides that:

‘ "day" means any calendar day; and

(a) when any particular number of days is prescribed for the performance of any act, the same must be reckoned exclusive of the first and inclusive of the last day; and

(b) the last day of any period must be excluded if it falls on a Saturday, Sunday or public holiday;

And "delivery" means service of copies on all parties and filing the original with the registrar;’

[3] Rule 17 deals with appeals. In terms of rule 17(4) the notice of appeal should be delivered within 30 days after the award, decision or compliance order came to the attention of the appellant.<sup>1</sup> The decision appealed against was given on 8 January 2021. In the absence of an indication to the otherwise it is accepted that the appellant was aware of the aforesaid award on the same date. Excluding the first day and including the last ordinary day, to fall within the 30-day period the notice of appeal had to be delivered on or before 8 February 2021. The notice was dated on 9 February 2021, delivered to respondent on 12 February 2021 and filed on e-justice on 15 February 2021. It was thus filed out of time.

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<sup>1</sup> (4) The notice of appeal referred to in subrule (2) or (3) must be delivered within 30 days after the award, decision or compliance order appealed against came to the notice of the appellant.

[4] The registrar upon such terms as it considers appropriate to ensure its safety makes the record dispatched to him or her in compliance of subrule (7) available to the appellant.<sup>2</sup> What the appeal record should contain is defined in rule 17(12). At the very least it must contain a correct and complete copy of the pleadings, evidence, and all documents necessary for the appeal certified as correct by the legal practitioner lodging it or by the person who prepared it.<sup>3</sup>

[5] The appeal must be prosecuted within 90 days after the noting of the appeal. If it is not prosecuted within such period it is deemed to have lapsed.<sup>4</sup> If the period of 90 days is calculated from the date on which the notice of appeal should have been delivered the last day for prosecuting the appeal would have fallen on 10 May 2021. If the date is taken as 15 February 2021 (being the date of its filing on e-justice) the 90-day period would have expired on 6 May 2021 and the appeal would have lapsed, then.

[6] The appeal is only deemed to be duly prosecuted after the registrar received an application to assign a date to the appeal. In this matter that application was delivered and filed on e-justice on 15 May 2021.<sup>5</sup>

[7] No record as defined in terms of the rules was filed. The only document that was filed that might have even a resemblance of a purported record was an unrelated arbitration award of Salathiel Nembungu (Applicant) and Coco Cola Namibia Bottling Company (CCNBC) (Respondent) filed on 15 February 2021.

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<sup>2</sup> (9) The registrar must, upon such terms as the registrar considers appropriate to ensure its safety, make available to the appellant the record despatched to him or her in compliance with subrule (7) or the conciliation and arbitration rules.

<sup>3</sup> (12) The record must contain a correct and complete copy of the pleadings, evidence and all documents necessary for the hearing of the appeal, together with an index thereof, and the copies lodged with the registrar must be certified as correct by the legal practitioner or party lodging the same or the person who prepared the record.

<sup>4</sup> (25) An appeal to which this rule applies must be prosecuted within 90 days after the noting of such appeal, and unless so prosecuted it is deemed to have lapsed.

<sup>5</sup> (19) On receipt of an application referred to in subrule (17) or (18) from appellant or respondent the appeal is deemed to have been duly prosecuted.

[8] This is probably why the legal representative, representing appellant, filed another purported arbitration award in this matter on 7 June 2021 one day before the hearing of the appeal. The award, although part of the record can by no stretch of the imagination be considered as a complete record as defined for purposes and intent of the appeal.

[9] On 8 June 2021 when the matter was originally set for hearing Mr. Nyambe who appeared for the appellant requested a postponement to file the record and the appellants heads of argument. The Court granted a postponement till 14 June 2021.

[10] On Friday 11 June 2021 the record was filed on e-justice and a hard copy of the record was delivered to my chambers.

[11] One only must peruse the long title of the Labour Act 11 of 2007 to see that it intended to amongst other objectives intended ‘...to provide for the systematic prevention and resolution of labour disputes...’. If one considers the 30-day provided in which an appeal must be lodged, and the 90-day period in which such appeal must be prosecuted before it lapses, the Legislature intended to cut out any long-drawn-out disputes between employers and employees.

[12] As must be apparent from *Katima Mulilo Town Council v Muyoba*<sup>6</sup>, a judgment by Geier J, the 90 days in which labour appeals can be prosecuted will only be stayed by the request of a date for the hearing of the appeal done after the filing on e-justice of a certified correct and complete copy of the pleadings, evidence and all documents necessary for the appeal.<sup>7</sup>

[13] In this matter the notice of appeal was delivered outside the prescribed period, no proper record was filed before the request for the allocation of a trial date was made. The eventual filing of the first partial and later full record happened outside the period allowed in the rules. The appeal period of 90 days was not stayed and appeal thus lapsed.

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<sup>6</sup> *Katima Mulilo Town Council v Muyoba* (HC-MD-LAB-APP-AAA-2017/00019) [2019] NALCMD 39 (20 September 2019)

<sup>7</sup> *Ibid* but especially paragraphs 52 and 59

[14] In the result I make the following order:

1. The appeal has lapsed and is accordingly struck from the roll.

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D. F. SMALL  
Acting Judge

## APPEARANCES

APPELLANT: Mr M. Nyambe  
Of Mukaya Nyambe Inc, Ongwediva

RESPONDENT: No appearance