

**REPUBLIC OF NAMIBIA**



**IN THE HIGH COURT OF NAMIBIA  
MAIN DIVISION, WINDHOEK**

<b>Case Title:</b> Auguste Flora Harases v Erongo Regional Electricity Distributors Company (Pty) Ltd	<b>Case No:</b> HC-MD-LAB-MOT-GEN-2020/00221
	<b>Division of Court: High Court</b> Main Division
<b>Heard before:</b> Honourable Lady Justice Tommasi	<b>Heard on:</b> 24 June 2022 <b>Delivered on:</b> 6 July 2022
<b>Neutral citation:</b> <i>Harases v Erongo Regional Electricity Distributors Company (Pty) Ltd</i> (HC-MD-LAB-MOT-GEN-2020/00221) [2022] NALCMD 38 (6 July 2022)	
<b>The order:</b>  Having heard <b>MS R KANDJELLA</b> on behalf of the Applicant, <b>MR E COETZEE</b> on behalf of the Respondent and having read the documents filed of record:	

**IT IS ORDERED THAT:**

The application for leave to appeal is struck from the roll.

**Reasons for order:**

TOMMASI J:

[1] This is an application for leave to appeal against the order which was granted on 19 April 2022.

[2] The respondent raised two points *in limine* but only pursued one of the points i.e. that the application for leave to appeal does not comply with the provisions of Rule 115 of the High Court in that the application was not accompanied by the statement of grounds for leave to appeal. The respondent prayed.

[3] Rule 115 (1) and (2) reads as follow:

‘(1) When leave to appeal from a judgment or order of the court is required the person seeking leave to appeal may, on a statement of the grounds for the leave to appeal, request for leave to appeal at the time of the judgment or order.

(2) When leave to appeal from a judgment or order of the court is required and it has not been requested at the time of the judgment or order application for such leave must be made together with the grounds for the leave to appeal within 15 days after the date of the order appealed against.’ [ my emphasis]

[4] The applicant herein filed a notice of application for leave to appeal in terms of Rule 115. There was no statement of the grounds for leave to appeal attached or filed. Ms Kandjella, counsel for the applicant, submitted that they have been permitted in practice to file their grounds for leave to appeal in the Heads of Argument and that the applicant in any event appeals against the entire judgment of the court.

[5] Mr Coetzee referred this court to the case of *Council of the Municipality of Windhoek v*

*Brandt*, HC-MD-LAB-APP-AAA-2019/00003 (INT-HIC-LEA-2021/00133) [2021] NAHCMD 39 23 August 2021), an unreported judgment delivered on 23 August 2021, where the court held that the application need not be brought on notice of motion, but that a statement setting out the grounds of appeal as required by Rule 115 would suffice.

[6] In *Hollard Insurance Company of Namibia v Minister of Finance*<sup>1</sup>, Geier J, at para 8, stated the following:

In this regard it is also clear that not all applications have to be brought 'on notice of motion' supported by an affidavit and that an application can also be brought 'on notice', in an appropriate case, for as long as it is accompanied by the grounds,<sup>2</sup> on which such application is based.<sup>3</sup>

[7] Whether leave to appeal is applied for at the time of judgment or order or afterwards, the applicant is required to state the grounds on which it would be seeking leave to appeal. The court, when considering the application for leave to appeal, must consider whether there are reasonable prospects that a different court may come to a different decision. It would not be possible for this court to determine the prospects of success in the absence of the grounds. It would also not be possible for the respondent to effectively oppose and prepare argument if not privy to the grounds for leave to appeal. It is for these reasons that the court cannot without more dispense with compliance with the provisions of Rule 115(2).

[8] ]In the result the following order is made:

The application for leave to appeal is struck from the roll.

**Judge's signature**

**Note to the parties:**

<sup>1</sup> HC-MD-CIV-MOT-REV-2018/00127) [2020] NAHCMD 247 (24 June 2020).

<sup>2</sup> As required in this instance by Rule 115(2).

<sup>3</sup> Compare in this regard for instance Rules 61(1) and (2) See also: *Veldman and Another v Bester* 2011 (2) NR 581 (HC) para 18 to 25 (under the old rules) and *Namibia Competition Commission v Namib Mills (Pty) Ltd* (HC-MD-CIV-MOT-GEN-2017/00061) [2019] 465 (7 November 2019) (under the new rules).

Tommasi J	Not applicable.
<b>Counsel:</b>	
<b>Applicant</b>	<b>Respondent</b>
Ms R Kandjella of AngulaCo. Inc. Windhoek	Mr E Coetzee of Tjitemisa and Associates Windhoek