



LABOUR COURT OF NAMIBIA MAIN DIVISION, WINDHOEK

JUDGMENT

Case no: HC-MD-LAB-MOT-REV-2019/00173

In the matter between:

LETSHEGO BANK NAMIBIA LIMITED

APPLICANT

and

PHILIP MWANDINGI

FIRST RESPONDENT

PAULINA NAILOKE DAVID

SECOND RESPONDENT

VICTOR AKWENYE

THIRD RESPONDENT

TWEYAMUSHO ESTER WILLIAM

FOURTH RESPONDENT

Neutral citation: *Letshego Bank Namibia Limited v Mwandingi* (HC-MD-LAB-MOT-REV-2019/00173) [2022] NALCMD 5 (15 February 2022)

Coram: ANGULA DJP

Heard: 7 July 2021

Delivered: 15 February 2022

Flynote: Labour Court – Interpretation of Statutes – Sections 82(10) and 82(15) of the Labour Act, 11 of 2007 (the ‘Act’) – Labour Commissioner’s designation of a conciliator after thirty (30) days stipulated by s 82(10) had lapsed did not result in nullifying all acts performed pursuant thereto – Doctrine of *ultra vires* – Conciliator acted *ultra vires* his statutory power when he dismissed the applicants referral of

dispute of interest – Labour Court power – Court has the power in terms of s 117(2) (a) to refer the dispute to the Labour Commissioner to appoint a different conciliator – Application for review granted.

Summary: The applicant lodged a review application, wherein it beseeched this court to set aside the decision of the conciliator (the first respondent herein), which was handed down on 20 May 2019 – On this score, the applicant held firm the view that the conciliator’s decision was not sanctioned by the Labour Act, in that, he did not have the power to dismiss a dispute of interest and that in so doing, he had acted *ultra vires*.

Held; the conciliator acted *ultra vires* his statutory power vested upon him by the Labour Act, 11 of 2007 by dismissing the applicant’s referral of dispute of interest.

Held; application for review granted.

ORDER

1. The decision made by the conciliator dated 20 May 2019, under case number NEGR48-18 dismissing the applicant’s referral of dispute of interest, is hereby reviewed and set aside.
2. The matter is referred back to the Labour Commissioner for a *de novo* conciliation.
3. The Labour Commissioner must designate a different conciliator to attempt to resolve the dispute as contemplated in s 82(10).
4. The applicant must cause this order be served on the Labour Commissioner and on respondents.

5. The date of service of this order on the Labour Commissioner shall constitute the date of referral of the dispute for purposes of computation of the thirty (30) days stipulated by s 82(10).
6. There is no order as to costs.
7. The matter is removed from the roll and regarded finalised.

JUDGMENT

ANGULA DJP:

Introduction

[1] This is an application for an order to review and set aside the decision of the first respondent ('the conciliator') dated 20 May 2019. The primary complaint is that, the conciliator acted *ultra vires* to s 82(15) of the Act when he dismissed the applicant's referral of a dispute of interest. The applicant further seeks an order in terms whereof the conciliator is directed to issue the certificate referred to in s 82(15) of the Act. The fourth respondent initially opposed this application, but she withdrew her opposition a day before the hearing. As such, the matter proceeded on an unopposed basis.

Parties

[2] The applicant is Letshego Bank Namibia, a public company and banking institution duly registered under the applicable Namibian laws, with its head office situated at No. 18 Schwerinsburg Street, Windhoek. The applicant is represented by Mr Maasdorp.

[3] The first respondent is Mr Philip Mwandingi, an adult male who was designated by the Labour Commissioner to conciliate the dispute under case number NEGR48-18, with employment address situated at Office of the Labour

Commissioner, 249-582 Richardine Kloppers Street, Khomasdal, Windhoek, Namibia. (the 'conciliator'). It is his decision of 20 May 2019 that is sought to be reviewed and set aside in this review application.

[4] The second respondent is Ms Paulina Nailongo David, a major female employed at Eenhana, Greenwell Complex, Shop number 17, Republic of Namibia.

[5] The third respondent is Ms Victor Akwenye, a major male person with his physical address being Erf 112, Oluno, Ondangwa, Republic of Namibia.

[6] The fourth respondent is Ms Tweyamusho Ester William, a major female person with her residential address being Erf 3268, Ongwediva, Republic of Namibia.

[7] At the outset, it is necessary to mention that the second to fourth respondents are employed by or were employed by the applicant as independent contractors who earned commission calculated on their net loans sold to customers each month. The relationship between the parties was governed by written agency agreement(s). After the promulgation of the Labour Amendment Act, 2 of 2012, the applicant was obliged by the Amendment Act to 'deem' the respondents as employees and no longer as independent contractors. As such, the applicant engaged the respondents in an attempt to change the terms and conditions of employment. No agreement could be reached in that respect. As a result, a dispute arose and this led to the referral of a dispute of interest by the applicant to the Office of the Labour Commissioner. The Act defines a dispute of interest as any dispute concerning a proposal for new or change conditions of employment.

The history of the referral

[8] The applicant referred the dispute of interest, which was received by the Office of the Labour Commissioner on 5 December 2018. On 7 January 2019, the applicant wrote a letter to the Labour Commissioner requesting that a certificate of unresolved dispute to be issued as the thirty (30) days contemplated in s 82(10) of the Act had lapsed since the dispute of interest had been received by the Office of the Labour Commissioner on 5 December 2018 and because the dispute remained

unresolved. In response to that letter and on 5 February 2019, the Labour Commissioner designated the first respondent as a conciliator to this matter.

[9] At the first conciliation meeting held on 22 February 2019, the first respondent ruled that he would first determine a point *in limine* raised by the respondents' legal representative. The preliminary point the conciliator had to determine was whether the dispute before him was a dispute of interest or a dispute of right. He then directed the parties to file written submissions by 5 March 2019 and 13 March 2019, respectively.

[10] In answer to the point *in limine* raised, the conciliator ruled that:

- '1. It is my finding that the referral of interest dispute by the applicant while there are several unresolved right issues between the parties is premature and or in bad faith.
2. It is also my finding that the right issues ought to be dealt with first and negotiations should follow thereafter.
3. The interest dispute referred by the applicant is dismissed.'

The applicant's case

[11] Aggrieved by the conciliator's findings and order, the applicant filed the present application to review and set aside the ruling of the conciliator. The applicant's main ground of review is that the ruling was made after the thirty (30) days prescribed by s 82(10)(a) read with s 82(15)(b) of the Act had lapsed. The applicant further seeks an order directing the conciliator to issue a certificate that the dispute between the parties is unresolved as prescribed by s 82(15) of the Act.

[12] It is the applicant's submission that when conciliator made the said ruling he was presiding as a conciliator not as an arbitrator. As a conciliator, so the argument goes, the first respondent did not have the jurisdiction to dismiss a dispute of interest and for that reason, his decision is liable to be reviewed and set aside.

[13] When the matter was called on 18 June 2021, the application was unopposed as the fourth respondent who was then the only respondent opposing the application had withdrawn her opposition the previous day. I indicated to Mr Maasdorp that I had a concern on the nature of 'the belief' the conciliator has to entertain before he or she can rule that there are no prospect of settlement for him or her to issue a certificate that a dispute is unresolved. This is because s 82(15) obliges the conciliator to issue such certificate if he or she 'believes that there are no prospects of settlement'. I then requested Mr Maasdorp to file heads of argument to address my concern. Counsel duly obliged and file heads of argument which put my concern to rest. It is therefore unnecessary to dwell on this aspect save to thank Mr Maasdorp for his assistance in this regard.

[14] As the saying goes, it is little foxes that spoil the vine – meaning it is little things, if overlooked that spoil things. In this regard one would have expected that an unopposed review application would not present problems. It turns out that while I was writing this judgment, it occurred to me, once again, that in the present matter by the time the Labour Commissioner designated the conciliator, the thirty (30) day's period calculated from the date Labour Commissioner received the referral, had already passed; and that the applicant had not addressed the legal effect of non-compliance with the relevant statutory provision. For completeness sake, the subsection stipulates that the conciliator must attempt to resolve the dispute 'within thirty (30) days of the date the Labour Commissioner received the referral of the dispute'. I then requested Mr Maasdorp to once again furnish me with additional short supplementary heads of argument on the legal effect of such non-compliance. Counsel duly obliged by filing further supplementary notes and his assistance to the court is appreciated.

[15] In my view, the issue regarding the lapse of thirty (30) days at the time the conciliator was designated, is important for the determination of whether, the proceedings before the conciliator ought to be reviewed and set aside. This is not only for the reasons relied upon by the applicant but because of the legal consequences of non-compliance with the time period prescribed by s 82(10). I now turn to set out in brief, the applicant's stance on this issue as advanced by Mr Maasdorp.

[16] Counsel submits that the legislature's intention as expressed in ss 82(8) – 82(17), read with chapter 7 of the Act as well as the Codes of Good Practice¹ must be taken into account. Section 82(8) provides that a party who refers the dispute must satisfy the Labour Commissioner that a copy of the referral has been served on all other parties to the dispute. Subsection 17 simply provides that a conciliator remains seized with the dispute until it is settled and must continue to endeavour to settle the dispute in accordance with the guidelines and codes of good practice issued in terms of s 137. The 'Codes of Good Practice on Industrial Actions and Picketing' provides practical guidelines in respect of strikes and lockouts. It provides, *inter alia*, that it must be taken into account in any proceedings by conciliators, arbitrator and judges.

[17] Counsel submits in this regard that on his analysis of provisions of the said subsections and the Code referred in the immediately preceding paragraph they suggest that the Labour Commissioner's failure to designate a conciliator within thirty (30) days from the date of referral of the dispute did not render the referral or all steps taken subsequent thereto null and void. The only effect of such failure would be that, the first phase of the dispute resolution process would be deemed completed and the dispute would then proceed to the next phase.

[18] Counsel points out in this regard that the first phase of the dispute resolution process is the conciliation and that this phase ends with the issuing of the certificate of unresolved dispute, should the dispute not be resolved. The second phase is the setting of the rules for a strike or lockout. Then phase three would be the actual strike or lock-out. All these three stages are under the auspices of the conciliator.

[19] Counsel finally submits that failure by the Labour Commissioner to comply with the statutory requirements, 'the parties should not be held responsible for his failures'. Mr Maasdorp further submits that for the reasons advanced by him, a court is not required to declare the entire proceedings null and void. Furthermore, that referring the matter back to the Labour Commissioner to designate a new conciliator would be contrary to the legislative intent. The argument further goes that, if the position in law is that, the Labour Commissioner had no powers to do anything about

¹ *Codes of Good Practice on Industrial Actions and Picketing Labour Act, 2007*. Published in GN 208 of 2009, 19 October 2009.

the dispute after the expiry of the prescribed thirty (30) days, then the court would not be in a position to give the Labour Commissioner such powers.

Issues for determination

[20] The first question for determination is: What is the legal effect of the action by the Labour Commissioner to designate a conciliator after the thirty (30) days prescribed by s 82(10)(a) had already lapsed? If the answer to the first question is that the designation is not null and void as contented on behalf of the applicant, the second question for determination is: Whether the first respondent, acting as a conciliator, acted *ultra vires* the provisions of ss 82(10)(a) and 82(15)(b) when he heard the point *in limine* and dismissed the dispute of interest referred by the applicant. I deal with the above questions in turn.

What is the effect on the action taken by the Labour Commissioner in designating a conciliator after the thirty (30) days period stipulated by s 82(10) had already lapsed?

[21] In order to answer the above question it is necessary to have regard to the provisions of s 82(10). It provides that -

‘Subject to the provisions of section 74(1)(c) and (3), the conciliator referred to in subsection (9) must attempt to resolve the dispute through conciliation within –

(a) 30 days of the date the Labour Commissioner received the referral of the dispute [underlined for emphasis]; or

(b) Any longer period agreed in writing by the parties to the dispute.’

[22] In present matter it is common ground that the dispute was received by the Office of the Labour Commissioner on 22 November 2018. The thirty (30) days lapsed on 24 December 2018. Meaning that, between 23 November 2018 and 24 December 2018, the Labour Commissioner ought to have designated a conciliator and the said conciliator ought to have attempted to resolve the dispute through conciliation by 24 December 2018. It is further common ground that by 24 December 2018 the Labour Commissioner had not yet designated a conciliator. It was only on 5

February 2019, that the Labour Commissioner designated the first respondent as conciliator, long after the referral had been received by his office on 22 November 2018. This, needless to say, was after the thirty (30) days as stipulated by s 82(10) of the Act had already lapsed.

[23] Subsection 82(10)(b), stipulates that the period of thirty (30) days may only to be extended in writing and upon agreement between the parties. It is also common ground that no such agreement was reached between the parties.

[24] The question whether a non-compliance with statutory time period results in nullifying all acts performed pursuant thereto was considered by the Supreme Court in *Torbitt*². In that matter the Supreme Court had occasion to interpret the provisions of s 86(18) of the Labour Act, which also stipulate that 'within thirty (30) days of the conclusion of arbitration proceedings the arbitrator must issue an award. The court *a quo* had found that an award issued outside the prescribed period of thirty (30) days was null and void *ab initio*. The Supreme Court rejected the interpretation proffered by the court *a quo*. It reasoned at paras 55-56 as follows:

[55] The injunction in s 86(18) to deliver an award within 30 days is aimed at addressing the delays in issuing awards. This is in line with the intention of the Legislature to ensure the efficient and speedy resolution of labour disputes. There is no provision in the Labour Act that non-compliance with s 86(18) is a nullity and void *ab initio*. Similarly, there is no explicit provision in the Labour Act which provides that non-compliance may be condoned by a commissioner or a court of law by extending the period within which the award is to be delivered.

[56] However as indicated supra in para 42, to interpret the word 'must' as peremptory in the sense that non-compliance with the 30 days period would render such award a nullity and void *ab initio*, would in my view, having regard to the circumstances of this case result in a gross injustice.'

[25] The court finally held that the legislature had no intention to visit non-compliance with the provisions of s 86(18) with nullity and that the word 'must' be

² *Torbitt and Others v International University of Management* (SA 16/2014) [2017] NASC 8 (28 March 2017).

interpreted as permissive, requiring that substantial compliance with the time line will not stultify the broader operation of the Act.

[26] Section 82(10) reads the same as s 86(18), I am accordingly bound to adopt the interpretation applied by the Supreme Court in *Torbitt*. In this matter neither the applicant nor the respondents claimed that they were prejudiced by the delay by the Labour Commissioner in not designing a conciliator within the prescribed period. In fact they all participated in the proceedings after the conciliator was appointed by filing heads of argument and thereafter their representatives made oral submissions before the conciliator. In addition, as was pointed out in *Torbitt* the parties had no control over the Labour Commissioner in order to ensure strict compliance with s 82(10).

[27] On the authority of *Torbitt (supra)*, I hold that it would be 'oppressive and extremely unjust' to hold under the circumstances that the designation of the conciliator outside the prescribed time was invalid and thus a nullity. I am satisfied that there was substantial compliance with the provisions of s 82(10).

[28] Section 82(10)(a) of the Act, stipulates that the conciliator 'must attempt to resolve the dispute within 30 days of the date the Labour Commissioner receives the referral of the dispute'. It is to be noted that the section uses the word 'must' similar to s 86(18) which was subjected to interpretation by the Supreme Court. It follows thus that the word 'must' in s 82(10) should likewise be interpreted as directory and not preemptory. Accordingly, the designation of the conciliator after the thirty (30) days period had lapsed did not result in invalidity.

[29] It would appear to me that there was a further non-compliance with the thirty (30) days period: that is the period between the designation of the conciliator and the delivery of the 'Ruling of Preliminary Issue' by the conciliator. In my view, that period constitutes another and separate non-compliance with the provisions of s 82(10) and needs to be considered and determined whether the cause of the delay has been sufficiently explained.

[30] According to the deponent to the applicant's founding affidavit, a letter was addressed to the Labour Commissioner on 7 January 2019 requesting that a

certificate of unresolved dispute be issued since the prescribed period of thirty (30) days had lapsed. Shortly, thereafter the conciliator was appointed on 2 February 2019. Thereafter the parties appeared before the conciliator on 22 February 2019.

[31] Its common ground that the respondents raised a point *in limine* regarding whether the dispute was one of interest or one of rights. The conciliator then instructed the parties to file their respective written submissions. The respondents delivered submissions in reply on 20 March 2019. Thereafter the conciliator delivered his ruling on 20 May 2019. The conciliator explained the reason for the delay in his ruling. According to him soon after the parties had submitted their heads of argument he was directed by his employer to take 25 days leave as he had too many days of accumulated leave. He went on leave and returned to office during the second week of May and as mentioned earlier the ruling was delivered on 20 May 2019.

[32] In the light foregoing explanation, I am satisfied that the further delay between the appointment of the conciliator and the delivery of the ruling, has been satisfactory explained and that the further non-compliance with the period of thirty (30) day prescribed by s 82(10) should not be visited with invalidity. In my judgment the issue of non-compliance with the provisions of s 82(10) has been put to rest and cannot be relied upon as a basis for the demand that a certificate of unresolved dispute be issued. I turn to consider status of the order issued by the conciliator.

Did the first respondent, acting as a conciliator, act ultra vires the provisions of s 82(15) when he dismissed the dispute of interest referred by the applicant?

[33] In order to appreciate the context in which the discussion below takes place, it is apposite to refer to s 82(15) of the Act which provides that a conciliator 'must issue a certificate that a dispute is unresolved if' -

(a)

(b) the period contemplated in subsection (10) has expired [underlined for emphasis].'

[34] There is no question that the dispute referred was a dispute of interest. That much is clear even from the conciliator's ruling which reads: 'The Interest Dispute referred by the applicant is dismissed.' I agree with the applicant's submission that a conciliator of a dispute of interest has no other powers other than those prescribed by ss 82(15), 82(16) and 83 of the Act. Section 82(15) empowers the conciliator to issue a certificate of unresolved dispute if he believes that there is no prospect of settlement. Section 82(16) empowers the conciliator to refer the dispute to arbitration if the parties so agreed. Section 83(2) empowers the conciliator to dismiss the matter if the party who referred the dispute fails to attend the conciliation meeting; or proceeds to determine the matter if the other party to the dispute fails to attend the conciliation meeting.

[35] I am of the view, that what was stated by the court in *Purity Manganese (Pty) Ltd v Tjeripo Katzao*, applies with equal force to the present matter and I fully associate myself with legal position as expounded by the court herein below:

'Not being a court or tribunal, a conciliator appointed under the Labour Act is an administrative functionary: He or she is a creature of statute and enjoys only such powers as are given to him or her under the Labour Act. A conciliator may not perform any function or exercise any power beyond that conferred upon him or her by the Act. It is trite that all public power must be sourced in law.³ As Hoexter correctly observes:⁴

"... administrators have no inherent powers. Every incident of public power must be inferred from a lawful empowering source, usually legislation. The logical concomitant of this is that an action performed without lawful authority is illegal or *ultra vires* – that is to say, beyond the powers of the administrator." '

[36] Having regard to the powers vested upon the conciliator as set out in the preceding paragraph and considered with what stated by the court in *Purity Manganese*, I am of the considered view that the conciliator acted *ultra vires* the powers vested upon him by the Act. It follows therefore that the order made by the first respondent in his capacity as conciliator dismissing the applicant's dispute of interest stands to be reviewed and set aside. I turn to consider whether the applicant

³ *Fedusure Life Assurance v Greater Jhb TMC* 1999 (1) SA 374 (CC) paras. 58-59.

⁴ Cora Hoexter, *Administrative Law in South Africa*, 2007 (Juta) at p 227.

is entitled to an order directing the first respondent to issue a certificate of unresolved dispute.

Is there a legal or factual basis to order the first respondent to issue a certificate of unresolved dispute?

[37] In this regard it is the applicant's case that this court should direct the first respondent to issue the certificate of unresolved dispute because the thirty (30) days stipulated by s 82(10) read with s 82(15)(b) had lapsed calculated from the date the Labour Commissioner received the referral of the dispute.

[38] I have earlier in this judgment held that the failure by the Labour Commissioner to designate a conciliator within thirty (30) days of referral did not render the referral and or all steps taken thereafter null and void. Accordingly, that argument cannot assist the applicant's case any longer.

[39] In my view, the question whether the certificate of unresolved dispute ought to be issued depends on whether it can be said on what transpired after the conciliator was designated that there had been an attempt by the conciliator to resolve the dispute?.

[40] Conciliation is defined in s 1 of the Act as to include inter alia '(a) mediating a dispute; and (b) conducting a fact finding exercise'. It has also been described by Parker⁵ as 'an attempt by a third party to facilitate a process whereby two disputing parties are brought together with the aim of assisting them to resolve their differences'. Keeping that definition in mind, I proceed to determine on the common cause facts whether what transpired in the present matter amounted to the conciliator attempting to conciliate the dispute between the parties in compliance with the provisions of s 82(10).

[41] What transpired between the parties appears from the conciliator's ruling of 20 May 2019 as a whole. According to the conciliator what transpired is that the respondents raised a point *in limine* whereupon the parties were directed to file heads of arguments. After the heads of argument were filed, the parties'

⁵ Labour Law in Namibia, First Edition 2012, p 176.

representative appeared before the conciliator and supplemented their written submission with oral arguments. Thereafter the conciliator reserved the ruling which he then delivered on 20 May 2019 upon return from leave.

[42] It appears from the above that no attempt was made by the conciliator to resolve the dispute. It is common cause that the dispute was one of interest, concerning the change of terms and conditions of the respondents' employment. It does not appear from the record that any meeting was held by the conciliator to attempt to assist the parties to resolve their differences.

[43] In my view, the ruling of the point *in limine* by the conciliator cannot be considered to be an attempt by him to conciliate the parties' differences. Even if it were to be argued that the ruling amounts to an attempt to conciliate, however on proper reading of the ruling it did not deal with major difference between the parties namely whether the dispute was one of interest or whether it was an a dispute of rights. Instead the conciliator skirted around the main issue holding that the referral was premature. It is elementary to say that ordinarily a point *in limine* does not deal with the merits but with a question of law. A point of law is not cable of being mediated. Either one party is wrong as far as legal position is concerned and the other one is right or vice versa.

[44] According to the applicant's summary of dispute, at para 23, the dispute was previously referred to the Labour Commissioner for conciliation. As a result of technicalities and *in limine* issues raised by the respondents, in order to prevent the conciliation process to continue being bogged down by technicalities the applicant had to withdraw the referral of the dispute and file the present referral. In my view, the significance of the summary is the absence of a statement that because of the fact that the matter became bogged down by technicalities the applicant demanded that the conciliator issued a certificate of unresolved dispute. It begs the question as to why the applicant did not request the conciliator to issue a certificate of unresolved dispute like it is doing in the present matter.

[45] In the light of the foregoing discussion and considerations, I am of the considered view that no conciliation took place before the first respondent and therefore no order for issuance of the certificate of unresolved dispute can follow.

Accordingly, this court is not prepared to refer this matter to the first respondent and to order him to issue a certificate of unresolved dispute as proposed by the applicant.

[46] Further reasons declining to accede the applicant proposal are that the first respondent has demonstrated, through his ruling that he has formed a strong view regarding the conduct of the applicant for instance stating that the applicant is acting or acted in bad faith. The first respondent has further demonstrated that that he misconceived his role as conciliator and not as an arbitrator by making the order which the applicant seeks to have reviewed and set aside. I dare say had it not been for the strategy to secure the issuance of the certificate the applicant would not be asking that the matter to be referred back to the first respondent.

[47] It is to be recalled that Mr Maasdorp submitted that the court does not have the power to refer the dispute back to the Labour Commissioner to appoint another conciliator to conciliate the dispute between the parties in this matter and that such order would be contrary to the legislation. I have regard to the provisions of the Act and I am convinced that this court has such power in terms of s 117(2)(a) to 'refer any dispute contemplated in ss (1)(c) or (d) to the Labour Commissioner for conciliation in terms of Part C of Chapter 8'. On the basis of this provision I am of the view that this court has the power to refer this matter to the Labour Commissioner for conciliation afresh.

[48] Taking all the facts and considerations into account, I am of the view that it would be fair and equitable to refer this dispute to the Labour Commissioner to appoint a different conciliator to conciliate the dispute of interest between the parties.

Conclusion

[49] In conclusion and in summary, I have found that failure by the Labour Commissioner to designate a conciliator within the period of thirty (30) days from the date the referral was received by his office, that such non-compliance did not render the referral or all steps taken thereafter null and void. I further found that the failure by the conciliator to attempt to conciliate the dispute within the prescribed period has been satisfactorily explained and therefore the non-compliance should not be visited with invalidity. I further found that the conciliator acted *ultra vires* his power vested

upon him by the Act when he dismissed the applicant's referral. Finally, I found that no conciliation within the meaning of the provision of the Act took place.

Order

[50] In the result, I make the following order:

1. The decision made by the conciliator dated 20 May 2019, under case number NEGR48-18 dismissing the applicant's referral of dispute of interest, is hereby reviewed and set aside.
2. The matter is referred back to the Labour Commissioner for a *de novo* conciliation.
3. The Labour Commissioner must designate a different conciliator to attempt to resolve the dispute as contemplated in s 82(10).
4. The applicant must cause this order be served on the Labour Commissioner and on respondents.
5. The date of service of this order on the Labour Commissioner shall constitute the date of referral of the dispute for purposes of computation of the thirty (30) days stipulated by s 82(10).
6. There is no order as to costs.
7. The matter is removed from the roll and regarded finalised.

H Angula
Deputy-Judge President

APPEARANCES:

APPLICANT: R MAASDORP
Instructed by Köpplinger Boltman Legal Practitioners,
Windhoek

RESPONDENTS: No appearance