THE REPUBLIC OF NAMIBIA

THE LABOUR COURT OF NAMIBIA, MAIN DIVISION, WINDHOEK

JUDGMENT

Case no.: HC-MD-LAB-APP-AAA-2023/00080

In the matter between:

CVW AUTO REPAIR & TRANSPORT CC **APPELLANT**

and

GOMES JOHANNES DUMINGO **1ST RESPONDENT**

EMMA N NIKANOR N.O **2ND RESPONDENT**

THE LABOUR COMMISIONER N.O **3RD RESPONDENT**

Neutral Citation: *CVW Auto Repair & Transport CC v Dumingo* (HC-MD-LAB-APP-AAA-2023/00080) [2024] NALCMD 19 (24 May 2024)

Coram: MILLER AJ

Heard: **19 April 2024**

Delivered: **24 May 2024**

Flynote*:* Labour Law – Appeal against decision of the Labour Commissioner – Decision in favour of the first respondent – Appeal restricted to questions of law only

in terms of Labour Act 11 of 2007, section 89(1)*(a)* – Whether the arbitrator erred in law when she came to the conclusion that the matter had not become settled – Appeal unopposed.

Summary: This is an appeal noted in terms of section 89(1)(*a*) of the Labour Act 11 of 2007 against a decision of the second respondent dated 16 October 2023. The appellant is a Close Corporation which employed the first respondent as a panel beater since 1 February 1992 until 26 June 2021, when the Appellant sent him home for showing signs of Covid-19. The first respondent stayed at home under self-isolation and on 10 August 2021 he tested negative for Covid-19. On 13 August 2021, the first respondent provided a sick note to the Appellant which was backdated and which the Appellant deemed unreliable. On 16 August 2021, the appellant informed the first respondent that his employment was terminated due to abscondment/desertion from the place of employment. On 1 September 2021, the first respondent referred a dispute of unfair dismissal to the office of the Labour Commissioner. Consequently, and on 17 February 2023, the appellant prepared a deed of settlement in which it agreed to pay the first respondent a total sum of N$ 18 000. On 27 February 2023 the appellant paid the first respondent a sum of N$ 8 106, 42. On 3 March 2023, the appellant sent an email (containing calculations of how the sum of N$ 8 106, 42 was arrived at) to the first respondent's representative stating that if the sum of N$ 8 106, 42 is not repaid by the first respondent by 3 March 2023, the appellant will regard the matter as having become settled.

Held that, the arbitrator erred in law in finding that no settlement was reached between the parties despite the appellant having paid the first respondent, and despite the first respondent not having protested or objected to the veracity or otherwise of the amount rendered and paid.

Held that, the decision of the arbitrator was wrong in law and must be set aside.

ORDER

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1. The appeal is upheld.

2. The decision of the second respondent dated 16 October 2023 is hereby set aside.
3. The matter became settled.
4. The court makes no order as to costs.
5. The matter is removed from the roll and regarded as finalised.

JUDGMENT

MILLER AJ:

A. Introduction

[1] This matter comes before me by way of an appeal against a decision by a Labour Commissioner, the second respondent. The appeal is not opposed by any of the respondents. The issue which called for determination by the second respondent was whether the appellant and the first respondent had concluded a settlement of the dispute. The second respondent concluded that the matter did not become settled and dismissed the appellant's argument that the matter had become settled. It is against this decision that the appeal lies.

B. The relevant facts

[2] The first respondent was employed by the appellant. His services were terminated. The first respondent thereupon launched proceedings claiming that he was unfairly dismissed. During the course of the proceedings, the appellant prepared and signed what was intended as an agreement of settlement. In terms of the document, the appellant offered to pay to the first respondent the sum of N$ 18 000 (eighteen thousand) as settlement of the claim. The document was submitted by the first respondent's representative together with a proof of payment in the sum of N$ 8106, 42. The difference in the amount came about due to the fact that the appellant deducted from the sum of N$ 18 000 certain amounts due by the first respondent. The first respondent was provided with a document setting out how the amount deducted was arrived at. This was forwarded to the first respondent's representative under cover of an email which reads as follows:

"The above matter refers.

Kindly find attached under cover hereof the loan account of your client as requested.

If our client's payment in terms of the settlement agreement, amounting to N$ 8 106.42, is not repaid by close of business on even date, CVW Auto Repairs & Transport Close Corporation will accept that a full and final settlement has been reached upon your client accepting our client's payment in terms of such settlement agreement."

[3] There was no response to this communication. The amount paid to the first respondent was not repaid, nor was there any protest or objection to the veracity or otherwise of the amount rendered and paid.

[4] I am of the view, firstly, that the fact that the written deed of settlement was not signed by the first respondent does not render the document void. Clearly, it was intended as a memorial of what was previously agreed upon between the parties.

[5] The effect of a dispute becoming settled is that the original causa becomes compromised and is replaced by the terms of the settlement agreement. Should it appear that either of the parties to the agreement is in breach of the terms of the agreement, the remedy of the aggrieved party will be based upon the agreement and the breach thereof. A breach of this nature does not revive the initial cause of action which had become settled.

[6] I consequently conclude that the decision of the second respondent was wrong in law and it should be set aside. Accordingly, I make the following order:

1. The appeal is upheld.
2. The decision of the second respondent dated 16 October 2023 is hereby set aside.
3. The matter became settled.
4. The court makes no order as to costs.
5. The matter is removed from the roll and regarded as finalised.

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APPEARANCES:

APPELLANT:	S Horn Of Theunissen, Louw & Partners, Windhoek
RESPONDENTS:	No appearance