

**THE REPUBLIC OF NAMIBIA**



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

**JUDGMENT**

Case no.: HC-MD-LAB-APP-AAA-2023/00076

In the matter between:

**OLYMPIA EYE & LASER CENTRE**

**APPELLANT**

and

**SUZETTE CHARMAINE ABRAHAMS**

**1<sup>ST</sup> RESPONDENT**

**DAVID ITANA N.O.**

**2<sup>ND</sup> RESPONDENT**

**THE LABOUR COMMISSIONER N.O.**

**3<sup>RD</sup> RESPONDENT**

**Neutral Citation:** *Olympia Eye & Laser Centre v Abrahams* (HC-MD-LAB-APP-AAA-2023/00076) [2024] NALCMD 42 (25 October 2024)

**Coram:** MILLER AJ

**Heard:** 6 September 2024

**Delivered:** 25 October 2024

**Flynote:** Labour Law – Appeal in terms of s 89(1)(a) of the Labour Act, 2007–  
Appeal against decision of the Labour Commissioner in dismissing a point in limine –  
Defective LC 21 – Legal formalism – Form over substance

**Summary:** This is an appeal against a decision by the second respondent dismissing the argument that the Form LC 21 was fatally defective. The relevant form was completed by the first respondent when she lodged a complaint to the third respondent's that she was wrongfully dismissed.

*Held* that, there is no reason why an obvious error in the date where it appears on Form LC 21, cannot be corrected either by agreement or by way of evidence.

*Held* further that, by their very nature arbitration proceedings before the Labour Commissioner should be disposed speedily, efficiently and without legal formalism. The appellant in this matter seeks to put form before substance. Such a formalistic approach is unwarranted on the relevant facts.

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### **ORDER**

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1. The appeal is dismissed.
2. The matter is referred back to the second respondent to continue with the proceedings pending before him.

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### **JUDGMENT**

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MILLER AJ:

#### Introduction

[1] The appellant appeals to the court against a decision by the second respondent dismissing the argument that Form LC 21 was fatally defective. The relevant form was completed by the first respondent when she lodged a complaint to the third respondent's that she was wrongfully dismissed.

[2] The first respondent, when she completed the relevant form stated that the dispute arose on 15 January 2023. The appellant latched onto this fact and contends that the date was wrong. According to the appellant, the dispute arose on 20 January 2023.

[3] It soon became common cause between the parties that the correct date was in fact 20 January 2023. Nothing turns on the fact that the date of 15 January 2023 was stated to be the date upon which the dispute arose.

[4] The stance adopted by the appellant before the second respondent and the court is that the wrong date renders the complaint a nullity that cannot be rectified. It was submitted that the only way to redress the situation was to set the relevant form LC 21 aside.

[5] Counsel for the appellant seeks to rely on the matter of *Waterberg Wilderness Lodge v Uses & Others*<sup>1</sup>. The reliance on that case is misplaced since it is quite apparent that it is distinguishable on the facts.

[6] I find no reason why an obvious error in the date where it appears on Form LC 21, cannot be corrected either by agreement or by way of evidence. By their very nature, arbitration proceedings before the Labour Commissioner should be disposed speedily, efficiently and without legal formalism. The appellant in this matter seeks to put form before substance. Such a formalistic approach is unwarranted on the relevant facts.

[7] I will accordingly dismiss the appeal.

[8] The orders I make are:

1. The appeal is dismissed.

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<sup>1</sup> *Waterberg Wilderness Lodge v Uses and Others* (LCA 16 of 2011) [2011] NAHC 322 (20 October 2011).

2. The matter is referred back to the second respondent to continue with the proceedings pending before him.

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P J MILLER

## APPEARANCES

APPELLANT: S Horn  
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RESPONDENT: R Mondo  
Of Metcalfe Beukes Attorneys  
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