

REPUBLIC OF NAMIBIA



IN THE LABOUR COURT OF NAMIBIA, MAIN DIVISION, WINDHOEK
RULING

Case Title: OHORONGO CEMENT (PTY) LTD APPLICANT and BENJAMIN H KHOESEB 1 ST RESPONDENT JULIA MUTENDA N.O 2 ND RESPONDENT	Case No: HC-MD-LAB-APP-AAA-2023/00070 (INT-HC-MD-OTH-2024/00003)
	Division of Court: HIGH COURT (MAIN DIVISION)
Heard before: Honourable Mr Justice Miller AJ	Date of hearing: 01 MARCH 2024
	Delivered on: 05 MARCH 2024
Neutral citation: <i>Ohorongo Cement (Pty) Ltd v Benjamin H Khoeseb</i> (HC-MD-LAB-APP-AAA-2023/00070) [2024] NALCMD 6 (05 March 2024)	
IT IS ORDERED THAT: 1. The effect of section 89(6) of the Labour Act 11 of 2007 is hereby varied, and the operation of the arbitration award delivered on 15 September 2023 in arbitration NRTS 154-22 is hereby suspended, pending the final determination of applicant's appeal of the award. 2. The operation of any enforcement order which the respondent may obtain under the award in terms of section 90 of the Labour Act 11 of 2007, is hereby suspended pending the final determination of applicant's appeal and review of the award. 3. The operation of any warrant of execution which the applicant may obtain under the arbitration award in terms of section 90 of the Labour Act 11 of 2007 is hereby	

suspended, pending the applicant's appeal and review of the award.

4. Insofar as it may become necessary, an order rescinding any enforcement order which the respondent may obtain under the award in terms of section 90 of the Labour Act 11 of 2007.
5. The matter is removed from the roll and regarded as finalised.

Reasons for the Order:

MILLER AJ:

[1] On 15 September 2023 the second respondent found during the course of the arbitration proceedings, that the first respondent had been unfairly dismissed by the applicant. As a consequence the applicant was ordered to pay the sum of N\$648 747, 52 to the first respondent.

[2] The applicant lodged an appeal to the Labour Court against the findings of the second respondent. The appeal has since been enrolled and is due to be heard during April 2024.

[3] The present proceedings before me is directed at an order that the award be stayed pending the finalisation of the appeal.

[4] In my view, the deciding factor is the possibility of irreparable harm which may be suffered by the applicant, in the event that the execution of the award is not stayed. It is apparent from the facts before me that there exists a real possibility that the applicant may suffer irreparable harm if the order it seeks is not granted. The financial position of the first respondent is such that he will not be able to refund the applicant should the appeal be successful in the pending appeal proceedings. The probabilities are that the entire amount or a substantial part thereof will be dissipated before the appeal is finalised. In such a case, the approach of the court will be to stay the execution of the award.¹

¹ *Hardap Regional Council v Sankwasa and Another* [2009] NALC 4 (28 May 2009).

[5] I thus make the following order:

1. The effect of section 89(6) of the Labour Act 11 of 2007 is hereby varied, and the operation of the arbitration award delivered on 15 September 2023 in arbitration NRTS 154-22 is hereby suspended, pending the final determination of applicant's appeal of the award.
2. The operation of any enforcement order which the respondent may obtain under the award in terms of section 90 of the Labour Act 11 of 2007, is hereby suspended pending the final determination of applicant's appeal and review of the award.
3. The operation of any warrant of execution which the applicant may obtain under the arbitration award in terms of section 90 of the Labour Act 11 of 2007 is hereby suspended, pending the applicant's appeal and review of the award.
4. Insofar as it may become necessary, an order rescinding any enforcement order which the respondent may obtain under the award in terms of section 90 of the Labour Act 11 of 2007.
5. The matter is removed from the roll and regarded as finalised.

Judge's signature	Note to the parties:
	Not applicable.
Counsel:	
Applicant	First Respondent
G DICKS Instructed by Koep & Partners, Windhoek	P GRUSSHABER of Government - Ministry of Justice: Legal Aid, Windhoek