

REPORTABLE

CASE NO. SA 4/2007

IN THE SUPREME COURT OF NAMIBIA

In the matter between

NAMIBIAN BROADCASTING CORPORATION

APPELLANT

and

ADRIAAN JACOBUS KRUGER

FIRST RESPONDENT

AUGUST CHORIEN BIKEUR

SECOND RESPONDENT

**UNANISA PHILLIP KAVETUNA
MOSHE MOSES BAITSEWE
FREDDY MYNHARDT BROWN
GERHARD HEINRICH CLAASEN
LORENZO AHLEN DAVIES
FREDEGAR KARL FREWER**

**THIRD RESPONDENT
FOURTH RESPONDENT
FIFTH RESPONDENT
SIXTH RESPONDENT
SEVENTH RESPONDENT
EIGHTH RESPONDENT
NINTH RESPONDENT
TENTH RESPONDENT
ELEVENTH RESPONDENT**

UETUJENGUA MOSES HENGARI

DERICK THOMAS JASON

TWELFTH RESPONDENT

ADELL ELSE KAITJINDI

THIRTEENTH RESPONDENT

**CONST KAKUNDE
JOHN THEO KAURISA
SIMSON KAZOMBIAZE
GEORGE ANDRIES LE HANIE
ROSEMARY MAMPI NALISA
RONEL POOLMAN
GOTFRIED SHILEMO
NGATANGUE TJIRIMUJE
ESAU UIRAB
STEFANUS UIRAB
MARILYN LYPNA VRIES**

**FOURTEENTH RESPONDENT
FIFTEENTH RESPONDENT
SIXTEENTH RESPONDENT
SEVENTEENTH RESPONDENT
EIGHTEENTH RESPONDENT
NINETEENTH RESPONDENT
TWENTIETH RESPONDENT
TWENTY FIRST RESPONDENT
TWENTY SECOND RESPONDENT**

Coram: Shivute, CJ, Maritz, JA, *et* Chomba, AJA

Heard on: 22/10/2007

Delivered on: 12/06/2009

APPEAL JUDGMENT

SHIVUTE, CJ:

[1] I have had the privilege of reading in draft the erudite judgments prepared by my Brothers Maritz, JA and Chomba, AJA in this matter and have noted that whilst they agree on the reasoning and conclusion in respect of the second to the twenty second respondents as well as on the order proposed in the judgment of Chomba, AJA affecting all the respondents, there exists a divergence of opinion between my Brothers on the reasoning leading to the conclusion that the appeal be allowed also in respect of the first respondent. The issue on which my Brothers' views diverge is not one free from difficulty. It does therefore not come as a surprise that there should be a divergence of judicial opinion on it.

[2] I must point out from the outset that I, too, have no hesitation in agreeing with the findings made by my Brother Chomba, AJA in respect of the second to the twenty second respondents. The sources he cited are authoritative and the application of the law to the facts of the case as well as the analysis of the issues germane to the appeal are unassailable. I would therefore be inclined to associate myself with his reasoning and would have no difficulty in embracing the order he has proposed in respect of those respondents for the very cogent reasons advanced in his judgment. I furthermore agree with his conclusion that the appeal be allowed also in respect of

the first respondent. Like my Brother Maritz, JA, however, I am unable to agree with the route he took to arrive at that conclusion.

[3] The facts of the case as well as the applicable legal principles have been set out in the judgments of my Brothers and it would be futile to recount them here. Suffice it to say that on the crucial question that had ignited debate resulting in divergence of opinion, whilst Chomba, AJA has concluded that the contents of the documents that had passed between the appellant and the first respondent did not constitute an offer and acceptance and therefore did not result in the conclusion of a valid contract between the parties as well as the further finding by him that the termination by the appellant of the employment contract between it and the first respondent was not consensual but a unilateral act on the part of the appellant, Maritz, JA on the other hand, has come to a contrary conclusion on the point. He has found, *inter alia*, that the invitation that had been extended to the first respondent to participate, if so minded, in the voluntary retrenchment scheme, was premised on the clear understanding that should he elect to participate, he might be required to sign a deed of final settlement; that by informing the appellant that he had opted for the voluntary severance package “available”, such package is the one conditional upon his signing the deed of final settlement if called upon to do so. It followed then, so Maritz, JA reasoned, that although his application was not expressly referred to as an “offer”, it was in substance an offer subject to the requirement to sign a deed of final settlement if called upon to do so. The appellant had accepted the respondent’s offer

to be retrenched and by the same token had elected to accept the first respondent's offer to sign a deed of settlement "as contemplated in the guidelines". It followed, so Maritz, JA concluded, that the written exchanges between the parties constituted a contract by offer and acceptance subject to the appellant's voluntary retrenchment policy guidelines. It followed furthermore that the first respondent was retrenched in terms of the agreement that was concluded when the appellant had accepted the first respondent's application for voluntary retrenchment under the scheme.

[4] As regards the meaning to be ascribed to the phrase "years of service with the NBC", Maritz, JA, applying the golden rule of interpretation, including extrinsic evidence such as the first respondent's insistence not to sign the deed of final settlement "until the NBC has taken an official decision concerning the payouts of SWABC years of service, *additional to the voluntary package*" (emphasis added), found that that phrase meant no more than what it says, namely service with the NBC.

[5] I am in complete agreement with the reasoning of Maritz, JA on the point on which there are differences of opinion. I agree, in particular, that the first respondent had offered to partake in the retrenchment scheme knowing that if his offer were to be accepted, he might be required to sign a deed of final settlement; that his offer was accepted by the appellant thereby resulting in a valid contract between the parties; that the employment relationship was terminated pursuant to and in terms of the

agreement that was concluded when the first respondent's application for participation in the voluntary retrenchment scheme had been accepted; and that the phrase "years of service with the NBC" does not include the first respondent's years of service in the employment of SWABC prior to Independence.

[6] I, too, would allow the appeal and for the reasons given by Maritz, JA in respect of the first respondent, I will join in the order proposed by Chomba, AJA.

SHIVUTE, CJ