



HIGH COURT OF NAMIBIA MAIN DIVISION, WINDHOEK

JUDGMENT

Case no: LCA 50/2011

In the matter between:

LEON JANSE VAN RENSBURG

APPLICANT

and

WILDERNESS AIR NAMIBIA (PTY) LTD

RESPONDENT

Neutral citation: *Van Rensburg v Wilderness Air Namibia (Pty) Ltd* (LCA 50/2011)
[2012] NAHCMD 1 (21 September 2012)

Coram: MILLER AJ

Heard: 20 July 2012

Delivered: 21 September 2012

ORDER

The application is dismissed.

JUDGMENT

MILLER AJ:

[1] This is an application for leave to appeal to the Supreme Court of Namibia against the judgment delivered by me on 4 April 2012.

[2] Those proceedings concerned an appeal by the present respondent against an arbitration award made by an arbitrator in the office of the Labour Commissioner, in terms of the Labour Act, 2007.

[3] In my judgment of 4 April 2012 I allowed the appeal and set aside the arbitrator's award.

[4] For the purposes of this application it is necessary to once more summarize and state the salient facts upon which the proceedings from their inception turned. They are these:

- (a) The respondent conducts an air charter service;
- (b) During the times relevant to this case the applicant was employed by the respondent as a pilot;
- (c) On 9 May 2010 the appellant was about to depart from Epacha airport with an aircraft of the respondent with registration number V5-ELE. On board were twelve passengers;
- (d) The applicant maneuvered the aircraft onto the runway without visually checking that the runway was clear;
- (e) In fact another aircraft piloted by one Brasler was in the process of taking off using that runway;
- (f) A collision between the two aircraft was narrowly avoided;
- (g) The applicant was subjected to internal disciplinary proceedings at which it was found that the applicant was negligent although not grossly so;
- (h) The issue of the applicant's negligence was never placed in issue;
- (i) Having considered the matter the respondent imposed the sanction quoted in paragraph 11 of the judgment;
- (j) The applicant then instituted proceedings before the Labour Commissioner;
- (k) Following an arbitration hearing the Labour Commissioner the arbitrator appointed to conduct the proceedings set aside the sanction imposed by

the respondent and replaced it with the sanction quoted in paragraph (16) of my judgment;

[5] The question that now arises is whether there is a reasonable prospect that another court will come to a conclusion different to the one I came to. I will do no more than repeat my reasoning and conclusions in paragraphs 18 to 24 of my judgment.

[6] I am not persuaded that there is a reasonable prospect that another court will differ from that.

[7] In the result the application is dismissed.

P J Miller
Acting Judge

APPEARANCES

APPELLANT:

B FORD

Instructed by Hohne & Co., Windhoek.

RESPONDENT:

C J MOUTON

Instructed by Koep & Partners, Windhoek