

REPUBLIC OF NAMIBIA



IN THE LABOUR COURT OF NAMIBIA, MAIN DIVISION, WINDHOEK
PRACTICE DIRECTIONS 61
ORDER AND REASONS

CASE NO.: HC-MD-LAB-MOT-GEN- 2022/00292

In the matter between:

TELECOM NAMIBIA

APPLICANT

and

PURITY MANDJOLO

1ST RESPONDENT

FERGIE UUMATI

2ND RESPONDENT

BESTER MAIBA SINVULA N.O

3RD RESPONDENT

Neutral Citation: *Telecom Namibia v Mandjolo* (HC-MD-LAB-MOT-GEN-2022/00292) [2023] NALCMD 2 (27 January 2023)

Coram: OOSTHUIZEN J

Heard: 30 December 2022 and 13 January 2023

Delivered: 27 January 2023

ORDER

1. The applicant's non-compliance with the rules relating to service and forms is condoned and applicant's urgent application as contemplated in Rule 6(24) of the Labour Court Rules read with Rule 73(4) of the High Court Rules, is approved.
2. The execution and/or operation of the arbitration award in favour of first and second respondents issued by the third respondent on 6 December 2022 under case number NERU 47-21, is stayed pending the ultimate finalisation of the appeal filed under case number HC-MD-LAB-APP-AAA-2022/00076.
3. The order under order 2 above serve as an interim interdict with effect from 30 December 2022.
4. Each party to bear its own costs.
5. The matter is finalised and removed from the roll.

REASONS

OOSTHUIZEN J:

[1] Telecom Namibia, the applicant, brought an urgent application for the staying of an arbitration award issued on 6 December 2022 in favour of the first and second respondents.

[2] In terms of the award Telecom had to reinstate the two respondents with effect from 1 January 2023 and pay all remunerations due to respondents from the date of their respective dismissals on or before 31 January 2023.

[3] Applicant duly noted an appeal, but in terms of s 89(6)(b) of the Labour Act, 11 of 2007, the noting of an appeal does not suspend any part of the award adverse to the employer, Telecom.

[4] The application is urgent in nature.

[5] Applicant acted promptly in order to prevent reinstatement and payment.

[6] Section 89(8)(a) applied in *casu* favours the applicant more than the respondents. If the applicant was to reinstate and pay the respondents in terms of the award, it would suffer irreparable harm in trying to undo the reinstatement and payment in the event its appeal is ultimately successful. In the event applicant's appeal is unsuccessful, the respondents' prejudice is based on a delayed reinstatement and accumulated payment at a later stage. The first and second respondent's prejudice is thus reparable whereas applicant will be in a position to seek pecuniary losses from respondents which, on the evidence, are impecunious.

[7] I have applied and followed the case of *Hardap Regional Council v Sankwasa & Mwandingi*, Case Number LC 15/2009 delivered on 28 May 2009, in the circumstances.

[8] It is ordered that —

1. The applicant's non-compliance with the rules relating to service and forms is condoned and applicant's urgent application as contemplated in Rule 6(24) of the Labour Court Rules read with Rule 73(4) of the High Court Rules, is approved.

2. The execution and/or operation of the arbitration award in favour of first and second respondents issued by the third respondent on 6 December 2022 under case number NERU 47-21, is stayed pending the ultimate finalisation of the appeal filed under case number HC-MD-LAB-APP-AAA-2022/00076.

3. The order under order 2 above serve as an interim interdict with effect from 30 December 2022.
4. Each party to bear its own costs
5. The matter is finalised and removed from the roll.

GH OOSTHUIZEN
Judge

APPEARANCES

Applicants:

P Muluti
of Muluti & Partner, Windhoek

First and Second Respondents:

K Amoomo
of Kadhila Amoomo Legal Practitioners
Windhoek