

REPUBLIC OF NAMIBIA



LABOUR COURT OF NAMIBIA MAIN DIVISION, WINDHOEK

EX TEMPORE RULING ON STAY OF ARBITRATION AWARD

PRACTICE DIRECTIVE 61

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| Case Title: Agricultural Bank of Namibia and Beata Kapolo Immanuel Heita The Office of the Labour Commissioner | Applicant First Respondent Second Respondent Third Respondent | Case No: HC-MD-LAB-MOT-GEN-2023/00140 Division of Court: Labour Court, Main Division |
| Coram: Honourable Justice Coleman | | Heard: 6 July 2023 Reasons: 6 July 2023 |
| Neutral citation: | <i>Agricultural Bank of Namibia v Kapolo</i> (HC-MD-LAB-MOT-2023/00140) [2023] NALCMD 29 (6 July 2023) | |
| Order: | <ol style="list-style-type: none">1. The matter is heard on an urgent basis and the time periods and forms in the rules of this court are dispensed with.2. Subject to paragraph 3 of this order the award by second respondent made on 22 May | |

2023 in case number CRWK 444-20 is hereby suspended, pending the finalisation of the appeal against the aforesaid award.

3. Applicant is to pay first respondent's monthly salary commencing on 1 July 2023 until the finalisation of the appeal.
4. There is no order as to costs.

Reasons:

COLEMAN J:

Introduction

[1] This is an urgent application to stay the arbitration award made on 22 May 2023 in case number CRWK 444-20 by arbitrator, Immanuel Heita (cited as the second respondent herein).

Pertinent facts and submissions

[2] Since this is an urgent matter, I have no intention to embark on extensive analysis and deal with every allegation and submission on behalf of the parties.

[3] The first respondent was employed by the applicant as a Human Resources Manager until 1 December 2019 when she was dismissed after disciplinary proceedings. The alleged reason for her dismissal was her conduct during a disciplinary hearing of an employee of the applicant. There are many factual disputes around this, which are not for me to resolve now.

[4] A number of preliminary points are raised on behalf of the first respondent, being that the applicant has no *locus standi* since there is no resolution before court, the applicant is in contempt of court and no irreparable harm or prospects of success on appeal is shown.

[5] As far as the *locus standi* point is concerned, the founding affidavit on behalf of the applicant is deposed to by its manager legal services who alleges that she is duly authorised to bring this application. In response to the first respondent's allegations regarding *locus standi* in her answering affidavit, the applicant's legal practitioners uploaded a resolution by the board of the applicant as well as an 'Approval to Institute Proceedings' dated 30 June 2023 and signed by the CEO of the applicant.

[6] The second respondent's award is annexed to the applicant's founding affidavit and obviously speaks for itself. It is clear that the matter before him was extensively disputed. In his award, the second respondent sets aside the first respondent's dismissal, ordered her reinstatement with effect from 15 June 2023, and ordered the applicant to pay the first respondent an amount of N\$3 647 932,32, being the first respondent's salary that she would have earned had she not been dismissed. On 8 June 2023, the applicant noted an appeal. Various grounds of appeal are raised.

Conclusion

[7] In support of his submission that the applicant is not properly before court due to the fact that a resolution was not annexed to the founding affidavit, counsel for the first respondent referred to a number of cases, which in my view is of no assistance. The deponent to the applicant's founding affidavit says under oath that she is the applicant's manager legal services and she is duly authorised to bring this application. I am satisfied that enough is before court to warrant the conclusion that it is the applicant bringing this application.¹

[8] Furthermore, in my view, the fact that the applicant may be due to perform in terms of the award for a few days while it is pursuing its appeal is no bar against it pursuing this application on an urgent basis.

[9] From a perusal of the arbitration award and the grounds of appeal, it appears to me that there are reasonable prospects of success on appeal. As a result, I am satisfied that the

¹ *Mall (Cape) (Pty) Ltd v Merino Ko-operasie Bpk* 1957 (2) SA 347 (C) 351H-352C.

applicant made out a case for the stay of the award. During submissions, counsel for the applicant informed me that the applicant is prepared to pay the first respondent's salary from now on until the conclusion of the appeal while she (the first respondent) will not be required to go back to work.

[10] As a consequence, I make the following order:

1. The matter is heard on an urgent basis and the time periods and forms in the rules of this court are dispensed with.
2. Subject to paragraph 3 of this order the award by second respondent made on 22 May 2023 in case number CRWK 444-20 is hereby suspended, pending the finalisation of the appeal against the aforesaid award.
3. Applicant is to pay first respondent's monthly salary commencing on 1 July 2023 until the finalisation of the appeal.
4. There is no order as to costs.

| Judge's signature | Note to the parties: |
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| Counsel: | |
| Applicant | First respondent |
| PCI Barnard Instructed by Köpplinger Boltman Legal Practitioners, Windhoek | F Bangamwabo Of FB Law Chambers, Windhoek |