

REPUBLIC OF NAMIBIA



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

Case No: HC-MD-LAB-MOT-REV-2022/00221

In the matter between:

IRENE ELIZABETH JANSEN VAN VUUREN

APPLICANT

and

COMPACT PACKAGING & AGRI CC

1ST RESPONDENT

LEAH SHIMBABA

2ND RESPONDENT

LABOUR COMMISSIONER

3RD RESPONDENT

Neutral citation: *Van Vuuren v Compact Packaging & Agri CC* (HC-MD-LAB-MOT-REV-2022/00221) [2024] NALCMD 5 (23 February 2024)

Coram: OOSTHUIZEN J

Heard: 25 August 2023

Delivered: 23 February 2024

ORDER

IT IS ORDERED THAT:

Having heard MS JANSEN VAN VUUREN (applicant personally) and Mr Stoan Horn for the first respondent:

1. The applicant's review application is dismissed.
2. No order as to costs is made.
3. The matter is regarded as finalised and removed from the roll.

REASONS

OOSTHUIZEN J:

[1] The applicant was employed by the first respondent from 1 March 2019 to 30 May 2019 on probation.

[2] On 24 May 2019 the applicant received a letter informing her that her extended probation period was unsuccessful and her employment will come to an end on 30 May 2019.

[3] The applicant then referred a dispute to conciliation or arbitration for unfair dismissal and/or unfair labour practice and indicated on the Form LC 21 that the dispute arose on 31 May 2019.

[4] The first respondent took a point in *limine* that applicant's referral was defective in that the dispute arose on 30 and not 31 May 2019.

[5] Eventually the point in *limine* was upheld by the arbitrator.

[6] The applicant brought a review application and not an appeal.

[7] A review in terms of s 89(4) and (5) of the Labour Act 11 of 2007, is based on a defect in arbitration proceedings and means that the arbitrator committed misconduct in relation to the arbitrator's duties; committed a gross irregularity in the conduct of the arbitration proceedings or exceeded his/her powers or that the award has been improperly obtained.

[8] Before me, Mr Horn for first respondent took a point in *limine* that the applicant adopted the incorrect procedure by lodging a review application instead of an appeal.

[9] The applicant submitted that the arbitrator committed misconduct in relation to her duties as arbitrator and secondly committed a gross irregularity in the conduct of the arbitration proceedings.

[10] The first respondent submitted that the applicant did not make any factual allegations to support the allegations concerning misconduct in relation to the arbitrator's duties as an arbitrator, nor to support a gross irregularity in the arbitration proceedings.

[11] The award of second respondent (pp 199 to 202 of the Hearing Index) support the submissions by Mr Horn that there was no misconduct and/or irregularity warranting an intervention by this court.

[12] I concur that an appeal would have been the applicable procedure in the circumstances but do not opionate on such an appeal's prospects of success.

[13] Therefore, the following orders are made:

1. The applicant's review application is dismissed.

2. No order as to costs is made.
3. The matter is regarded as finalised and removed from the roll.

G H OOSTHUIZEN
JUDGE

APPEARANCE

APPLICANT: I E J van Vuuren
Applicant in person

1ST RESPONDENT: S Horn
Theunissen, Louw & Partners
Windhoek