

Practice Directive 61



IN THE LABOUR COURT OF NAMIBIA

Case Title: ROSH PINAH ZINC CORPORATION (PTY) LTD VS PETRUS MUZAZA & OTHERS	Case No: INT-HC-LEA-2022/00028 HC-MD-LAB-APP-AAA-2020/00051
	Division of Court: LABOUR COURT(MAIN DIVISION)
Heard before: TOMMASI, J	Date of hearing: 8 April 2022
	Date of order: 26 April 2022 Reasons delivered on: 26 April 2022
Neutral citation: <i>Rosh Pinah Zinc Corporation (Pty) Ltd v Muzaza</i> . (HC-MD-LAB-APP-AAA-2020/00051) [2022] NALCMD 27 (26 April 2022)	
Results on merits: No decision on the merits	
The order: Having heard Mr Lochner, on behalf of the Applicant(s) and Ms Cilliers, on behalf of the Defendant(s) and having read the Application for HC-MD-LAB-APP-AAA-2020/00051 and other documents filed of record: IT IS HEREBY ORDERED THAT: 1. The application for leave to appeal is granted. 2. No order is made as to costs.	

Reasons for orders:

[1] This is an application for leave to appeal a labour court judgment of this court. The first respondent do not oppose the merits of the applicant but only place in issue whether the application has been filed timeously.

[2] The first respondent submitted that the application was filed out of time i.e., after the *dies*, calculated in terms of the Labour Court Rules, have expired. The applicant submitted that the application for leave to appeal is in terms of the High Court Rules and as such it was timeously filed.

[3] Rule 115 (2) of the High Court Rules provides that, when leave to appeal from a judgment or order of the court is required, application for such leave must be made within 15 days after the date of the order appealed against. The court granted the order on 3 September 2022 although the court order was only approved and endorsed on 5 September 2022. The reasons were filed on e-justice on 7 September 2022 although the judgment itself reflects that it was released on 6 September 2022. The *dies* therefore would commence running on 7 September 2022 when the judgment was filed on e-justice. It stands to reason that the *dies* must be calculated in terms of the High Court Rules since it is the High Court Rules which governs the procedure for leave to appeal albeit an appeal against a Labour Court decision. The application was thus filed timeously.

[4] A reading of the grounds upon which the applicant is seeking leave to appeal reflects that the applicant takes issue with the conclusion of this court that the arbitrator was justified in concluding that the sanction which was imposed was not consistent with that of the D2 level officer and that the dismissal for this reason was unfair. His award in this regard was upheld and the appeal dismissed. The applicant submitted in its grounds *inter alia*, that the court misdirected itself by reaching the above conclusion when the evidentiary challenge raised was insufficient, alternatively by placing an evidentiary burden on the appellant to rebut the respondents' assertion of inconsistency, without him having mounted a proper challenge.

[5] It is trite that the applicant needs to satisfy this court that it has reasonable

prospects of appeal. I am satisfied that the applicant has shown that it has reasonable prospects of success and that a court of appeal could reasonably arrive at a different conclusion.

[6] In the result the following order is made:

3. The application for leave to appeal is granted.
4. No order is made as to costs.

Judge's signature	Note to the parties:
TOMMASI Judge	Not applicable
Counsel:	
Applicant	Respondent
Mr L Lochner of Engling, Stritter & Partners Windhoek	Ms M Cilliers Of AngulaCo Inc Windhoek