

REPUBLIC OF NAMIBIA

HIGH COURT OF NAMIBIA



MAIN DIVISION, WINDHOEK

RULING ON APPLICATION

FOR LEAVE TO APPEAL

Case Title: COUNCIL OF THE MUNICIPALITY OF WINDHOEK // NANCY LYNNE BRANDT	Case No: HC-MD-LAB-APP-AAA-2019/00003 (INT-HC-LEA-2021/00133)
	Division of Court: HIGH COURT (MAIN DIVISION)
Heard before: HONOURABLE MR JUSTICE ANGULA, DEPUTY JUDGE-PRESIDENT	Date of hearing: 20 AUGUST 2021
	Delivered on: 23 AUGUST 2021
Neutral citation: <i>Council of the Municipality of Windhoek v Brandt</i> (HC-MD-LAB-APP-AAA-2019/00003 (INT-HC-LEA-2021/00133)) [2021] NAHCMD 39 (23 August 2021)	
The order: Having heard Mr Muluti , on behalf of the applicant and Mr Vlieghe , on behalf of the respondent, and having read the documents filed of record and the submissions made by the parties: IT IS ORDERED THAT: 1. The points <i>in limine</i> are dismissed. 2. The application for leave to appeal is granted. 3. There is no order as to costs. 4. The matter is removed from the roll and is deemed finalized.	

Following below are the reasons for the above order:

[1] This is an application for leave to appeal against my judgment delivered on 22 April 2021. The application has been brought in terms of rule 115 of the rules of this court. The Labour Court Rules do not have a rule which provides for an application of this nature. Rule 22 of the Labour Court's rules provides that in the absence of a rule provides for a certain procedure the rules of the High Court shall apply.

[2] The respondent raised two points *in limine* in addition to the opposition of the application for leave to appeal on the merits.

Ad points *in limine*:

First point in limine

[3] The first point *in limine* is that the application for leave to appeal was filed late and that no condonation has been sought. In this regard, I hold that in view of the fact that the application was filed in terms of rule 115 of this court the time periods specified in that rule shall apply. This court is therefore not persuaded by the argument advanced on behalf of the respondent that the time period prescribed in the Labour Act, 11 of 2007 should apply. The argument is solely based on the apparent main objective of the Labour Act, 2007, to speedily deal with labour disputes. In my view the difference to be derived from the calculation based on the court's days as prescribed by the Labour Act and the court days as prescribed by the rules of the High Court are so negligible so to justify a departure from the application of the times prescribed by rule 115 of the Rules of the High Court. For those reasons, I am left unpersuaded that the point should prevail.

[4] Rule 115 provides that the an application for leave to appeal must be file within 15 court days calculated in terms of rule 1 of the rules of this court. Accordingly, in view of the fact that the reasons for the impugned decision were made available on the E-Justice system on 22 April 2021, the 15 days referred to in rule 115(2) is accepted to have commenced running from 22 April 2021 to 17 May 2021. It follows therefore that the point *in limine* stands to be dismissed.

Second point in limine

[5] Regarding the second point *in limine* raised by the respondents to the effect that the application is defective in that it should have been brought on notice accompanied by an affidavit as held by the court in *Namibia Water Corporation Ltd v Tjipangandjara* (LCA 16 & 17/2017 [2019] NALCMD 33 (21 November 2019). I decline to follow that judgment and elect to associate myself with the reasoning's of the court in *Hollard Insurance Company of Namibia Ltd v Minister of Finance and Another* (HC-MD-CIV-MOT-REV-2018/00127) [2020] NAHCMD 247 (24 June 2020) which was followed by the court in *Elias v Bank of Namibia* (HC-MD-LAB-APP-AAA-2020/00043) [2020] NALCMD 30 (16 October 2020). Both judgments held that an application for leave to appeal need not be brought on notice of motion and that a statement setting out the grounds of appeal as required by rule 115 would suffice. Accordingly, this point *in limine* equally stands to be dismissed.

Ad Merits

[6] Having considered the papers filed of record as well as counsel's oral submissions the court is of the view that there is a reasonable prospect that another court may come to a different conclusion. Accordingly, the court is persuaded that leave to appeal should be granted.

Judge's signature:	Note to the parties:
	Not applicable.
Counsel:	
Applicant	Respondent
P S Muluti <i>of</i> Muluti & Partners, Windhoek	S Vlieghe <i>of</i> PF Koep & Partners, Windhoek