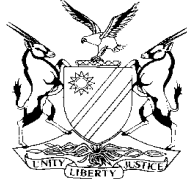


REPUBLIC OF NAMIBIA



CASE NO. LCA 41/2002

IN THE LABOUR COURT OF NAMIBIA

In the matter between:

**ERICA BEUKES**

**APPLICANT**

and

**THE PEACE TRUST**

**RESPONDENT**

**CORAM:** DAMASEB, JP

Heard: 6<sup>TH</sup> JULY 2011

Delivered: 8<sup>TH</sup> JULY 2011

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**JUDGMENT**

**DAMASEB, JP:** [1] The applicant in this matter seeks leave to appeal from a judgment delivered by myself on the 22<sup>nd</sup> of February 2010. She filed on 15 March 2010 what she termed notice of application for leave to appeal accompanied by an affidavit deposed to by her in person i.e. Erica Beukes. The affidavit consists of 13 pages in which she traverses several issues some of them factual, some of them calqued in a terms of grounds of appeal and attack on the judgment. She at page 3 under purpose of the intended appeal states that she wish to appeal to the Supreme Court to “review” the following irregularities in this

matter. It is therefore not immediately apparent to me whether this is an appeal which will be confined to the 4 corners of the record that served before me on appeal or it is a review. Be that as it may it appears that at the centre of her complaint is the fact that I misdirected myself in the matter that I approached the evidence and ought, in her view, to have accepted the version of events as testified to by her in the District Labour Court as opposed to the version as testified to by the respondent.

[2] Amongst others things she accuses me of political and personal bias and she also refers to the fact that the Legal Assistance Centre had no mandate to act in the appeal that was heard before me and that I have overstepped my jurisdiction severely by adjudicating on correspondence of the applicant which was never the subject of litigation against herself. She alleges that as a result of what she calls the irregularities during the trial of the appeal hearing she had been denied to alter partem; to a fair trial and that she has been denied the right to approach a competent court and that her rights to privacy and freedom were violated. In paragraph 16 of that affidavit she says that she wish to appeal in terms of article 25 of the Constitution of Namibia. She also specifically states that I misdirected myself on every crucial fact in the record and in fact and could only reach the judgment by a radical distortion of facts in favour of the respondent. It is also alleged that I had ignored the evidence of the applicant and that I distorted evidence of witnesses in order to suit the version of the respondent. The respondent in this matter takes the attitude that the appeal stands to be

dismissed because, one it violates the requirement of section 21(1)(a) of the Labour Act stating that an appeal to the Supreme Court can rely only on a question of law. Secondly the respondent argues that no reasonable Court would come to a different conclusion that I had.

[3] As I concluded in the judgment that is the subject of this application for leave to appeal I was able to dispose of the appeal on what, in my view, were common cause facts, the court a quo having failed to make credibility findings on what were hotly debated disputed factual issues in the trial court. I said in the judgment and I repeat:

“...the magistrate made no factual or credibility findings whatsoever in a situation where there so much accusation and counter-accusation between the protagonist on very specific issues. As the DLC made no credibility findings as to who she believed and why on the critical factual disputes that fell for determination, I am left on appeal with the unenviable task of having to make credibility findings without having had the benefit of seeing and hearing the witnesses and to assess their respective credibility. That is a very invidious position for an appeal court to be put in.”

[4] I stated further at page 32 of the paragraph 71:

“The chairperson of the DLC saw the witnesses and observed their demeanor. She was best placed to make a specific finding on that issue. She did not. Yet that finding is so crucial in any view to the outcome of the case.”

[5] At page 33 paragraph 74 I state the following:

“In the view that I take of the case, fortunately, it becomes unnecessary for me to make credibility findings in respect of the witnesses that testified as I am able to decide the case on the probabilities arising from the facts that are common cause.”

[6] The applicant’s complaint in the proceedings in the DLC was that the respondent fails to conduct a disciplinary hearing. I concluded that the applicant’s conduct was responsible for the fact that there was no such a hearing. On that finding I am satisfied that no other Court can reasonably come to a different conclusion.

[7] I also concluded that even if the applicant was denied a disciplinary hearing, I still had to be satisfied that in terms of section 45(1)(a) of the Labour Act, I still had to be satisfied that there was no valid reason for the dismissal. Having analyzed the evidence I was satisfied that the respondent had established a valid and fair reason for the dismissal in view of the applicant’s letter to the donors defaming the trustees and making unproven yet serious allegation against the trustees. No other Court could come to a different conclusion.

[8] Those are the main reasons on which I disposed off the appeal.

[9] The applicant raises other issues which were not before me during the appeal for example the alleged irregularity relating to the registration of the trust; the fact that the LAC was allowed to by me to represent the Peace Trust while it chaired the disciplinary hearing an issue never raised as a basis for the appeal before me. A justification for the leave to appeal the applicant raises and in fact regurgitates many factual averments made during the trial and in respect of which the DLC as I stated made no credibility findings. I do not think she is entitled to do and she can now only appeal on a question of law as clearly stated by the respondent, in any event those are matters on which I had made no findings whatsoever in my judgment and as I said I confined myself to probabilities arising from the facts that were common cause.

[10] I no deliberately have chosen not to make any comment on other allegations, both contemptuous and scandalous, against me. I can only state that apart from the fact that they do not constitute any ground for seeking leave to appeal they are baseless and deserve no serious consideration.

[11] I am satisfied that on the basis that this appeal was disposed by myself there is no prospect of success and that no other reasonable Court would come

to a different conclusion and in the premises the application for leave to appeal is dismissed.

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**DAMASEB, JP**

ON BEHALF OF THE APPLICANT:

In Person

ON BEHALF OF THE RESPONDENT:

Ms L Conradie

**Instructed By:**

**Legal Assistance Centre**