



IN THE HIGH COURT OF NAMIBIA

CASE NO.: LCA 19/2011

REPORTABLE

In the matter between:

SENIOR REAL ESTATE CC

APPELLANT

And

AMANDA TSOEU

RESPONDENT

CORAM: MILLER, AJ

Heard on: 07 July 2011

Delivered on: 22 September 2011

JUDGMENT

MILLER, AJ.: [1] This is an appeal against an order made in the district labour court in Windhoek in terms whereof an application for the rescission of a default judgment granted against the appellant was refused. The appeal was noted and filed in the district labour court on 13 February 2008 and amended on 14 March 2008. I shall refer to it as the “rescission appeal”.

[2] Various proceedings were instituted to stay the execution of the judgment pending the determination of the appeal. I need not dwell on those, save to say that on 1 December 2010 the Supreme Court made orders, *inter alia*, that in so far as he/she has not done so, the clerk of the district labour court was ordered to transmit the record of the rescission appeal to the Registrar of the Labour Court. Likewise the Registrar of the Labour Court was ordered to comply with Rule 18(1) of the Labour Court Rules.

[3] These orders were duly complied with and the rescission appeal was in due enrolled to be heard by me on 7 July 2011.

[4] In the interim the appellant had second thoughts. It considered, rightly or wrongly, that the notice of appeal filed on 13 February 2008 together with the amendment was a nullity. Consequently and on 21 June 2011 the appellant filed a notice withdrawing the notice of appeal dated 13 February 2008 and the amended notice of appeal dated 14 March 2008.

[5] The appellant simultaneously filed a fresh notice of appeal coupled with an application to this court for the condonation of the late filing of the new notice of appeal. It is accepted by the appellant that the notice of appeal filed on 21 June 2011 is filed well out of time and that condonation for the late filing thereof is required.

[6] At the hearing of the appeal Mrs. Petherbridge appeared for the appellant. The Respondent appeared in person.

[7] During the course of the proceedings before me, I raised with counsel for the appellant, the question whether this court was the correct forum in which to apply for condonation, or whether that application must be brought in the district labour court. Counsel's stance was that this court was indeed the right forum, and referred me to several reported decisions in the High Court of Namibia and some cases reported from the South African courts.

[8] The difficulty which confront the appellant, though is, that these cases all refer to proceedings in the High Court of Namibia or its South African equivalent.

[9] This appeal is dealt with in accordance with the now repealed Labour Act, 1992, Act 6 of 1992 and the regulations made pursuant to it.

[10] I have come across two judgments delivered in the Labour Court of Namibia in both of which the conclusion was reached that applications for condonation of the late filing of a notice of appeal must be brought in the district labour court. ***Bonifatius Tjirongo v Namdeb (Pty) Ltd (Case No. LC 8/97); Namibia Breweries Ltd v Willem Kaeka and another (Case No. LCA 34/10).***

[11] I respectfully agree with the conclusions reached by Mtambanengwe P and van Niekerk P who delivered the respective judgments.

[12] It follows that there is no appeal before me and the matter is struck from the roll.

ON BEHALF OF THE APPELLANT:

Mrs. Petherbridge

INSTRUCTED BY:

Petherbridge Law Chambers

ON BEHALF OF THE RESPONDENT:

In Person