

REPUBLIC OF NAMIBIA



LABOUR COURT OF NAMIBIA MAIN DIVISION, WINDHOEK

JUDGMENT

Case no: LC 132/2012

In the matter between:

THE ROYAL HOUSE OF CHIEF KAMBAZEMBI

APPLICANT

and

HAROLD KAVARI NO

1ST RESPONDENT

LABOUR COMMISSIONER

2ND RESPONDENT

MUJAZU URIKA

3RD RESPONDENT

Neutral citation: *The Royal House of Chief Kambazembi v Kavari* (LC 132/2012)
[2012] NAHCMD x (20 September 2012)

Coram: GEIER J

Heard: 20 September 2012

Delivered: 20 September 2012

Flynote: Practice - Applications and motions - Authority to launch application - Authority to depose to affidavit not meaning authority to launch application – authority conferred relating to the noting of an appeal only – authority to bring a application for a stay not expressly conferred by resolution – application for a stay not contemplated at the time resolution was made – nor had the need therefore arisen at the time – as respondent's attitude in respect thereof unknown then –

authority could thus not be implied – application thus dismissed for lack of authority to bring it

Summary: Application for a stay of execution pending the outcome of an appeal – Respondent's raising point of lack of deponent's authority to bring application of behalf of applicant – Resolution merely stating deponent 'assigned to act' – minuted discussion preceding resolution indicating that deponent be assigned to act in regard to the noting of an appeal only -

Held : Authority to bring an application for a stay not expressly conferred by resolution –

Held : Application for a stay not contemplated at the time resolution was made – nor had the need therefore arisen at the time – as respondent's attitude in respect thereof unknown then – authority could thus not be implied –

Held : From all these facts and circumstances it had to be inferred that the particular deponent was not authorised to bring this particular application.

Held : Application thus had to be dismissed for lack of authority to bring it-

ORDER

The application is dismissed

JUDGMENT

GEIER J:

[1] The applicant in this matter seeks to interdict the 3rd respondent on an urgent basis from executing an arbitration award made in his favour on the 21st August 2012, pending the outcome of an appeal which applicant noted in respect thereof on 6th September 2012.

[2] This application was opposed and *inter alia* the 3rd respondent also took issue with the deponents authority to bring this application on behalf of applicant and to attest to the necessary affidavits in this regard. The 3rd respondent also disputes that the deponent to the founding and replying affidavits, Mr Maharero, is the chairperson of the applicant.

[3] From what is set out here under - and which also seems to have been conceded in argument - it not be necessary to determine the latter particular part of the objection.

[4] In response to the main challenge to the deponents authority the applicant annexed a council resolution, dated 3rd September 2012, to its replying papers alleging that such resolution authorised V.D Mr Maharero :

“ .. to depose to this affidavit and to appear on behalf of applicant in this matter’.

[5] It needs to be mentioned immediately that there can of course be no empowerment for Mr Maharero to appear on behalf of the Applicant as this would be the prerogative of the Applicants legal practitioners.

[6] Mr Maharero, (the said deponent), alleges further that in terms of Section 9 (4) of the Traditional Act 25 of 2000 the Chiefs Council is responsible for the day to day administration of the affairs of the applicant and that he was correctly appointed as chairperson of the Council which validly resolved that he be authorised to act herein.

[7] This submission then shifts the focus on the nature and scope of the actual authority conferred by the Council of the applicant on Mr Maharero.

[8] The relied upon resolution, annexed as VDM 12, reads as follows:

'New matters

3.1.1 Labour case, Mr. M. Urika // Kambazembi Traditional Authority

The chairperson informs the House that the Arbitration award has been issued and Mr. M. Urika should be:

- * Re-instated
- * His allowance be retrospectively paid back.

The chairperson also informs the house that the same Arbitration Award dismissed the application of Mr. M. Urika.

Chief Kambazembi has been informed of the Arbitration Award by Mr. Ncube and after consultation with Chief Kambazembi, Chief instruct me (Mr. V.D. Maharero) to inform the House of his intention to appeal the case. The Chairperson inform the house that if the case is appealed there are documents to be signed and consultation

with Lawyers, and a person be appointed or nominated act on behalf of the Chief and Council.

The House elaborates the issue in depth.

Councillor A.U. Kandjeo oppose that Mr. Maharero the Chairperson be assigned to sign and act on behalf of the Chief and the Council for the case between M. Urika // Traditional Authority. Secondment: By Senior Councillor E. Kangumine.

Councillor E. Kaveterua propose that senior Councillor E. Kangumine be nominated and be assigned as second person in case Mr. Maharero not available. Secondment: By Councillor F. Kambai.

Resolution:

It is resolved that the Chairperson assigned to act on behalf of the Chief and Council and Senior Councillor E. Kangumine to act in his absence.'

[9] It immediately appears that the resolution does not say in respect of what 'the chairperson was assigned to act'. If one then reads the resolution in context it appears that the preceding discussion leading up to the resolution related to the question of whether or not the arbitration award made in favour of the 3rd respondent should be appealed against, as this was the wish of the Chief and it is in this regard that it was considered that certain documents would also have to be signed in consultation with the lawyers.

[10] What seems to have been contemplated was the conferment of authority to sign the necessary documentation for purposes of noting an appeal.

[11] Nowhere is it stated or apparent from the discussion or the resolution that an application for a stay of execution was considered at that stage or that Council was informed of the need for such application or that Council was informed that - given the need to bring such an application - that a person would have to be nominated to depose to the necessary affidavits and thus would also have to be authorised to bring an urgent application for the staying of the arbitration award.

[12] What is more there is also no express resolution for the authorisation for the bringing of any application at all.

[13] It is also clear that at the time of the deliberations of the applicant's Council no such application was considered because the urgent need therefore had simply not yet arisen, nor had the 3rd respondent's attitude towards such application even been ascertained.

[14] I therefore conclude that the bringing of this application could not have been within the contemplation of the Council at the time of the passing of the resolution annexed as 'VDM 12'.

[15] I might add that the resolution also does not indicate - as is customary in the usually wide formulation of a mandate in these matters¹ - that an identified person would be authorized ... *' to bring the application on behalf of the legal persona , which person would also be authorised to do all things necessary in that regard thereto and who would also be empowered to prosecute such appeal to its final end and determination ... '*. (my underlining)

[16] The Court was referred to the High Court's decision of *Duntrust (Pty) Ltd v H Sedlacek t/a C M Refrigeration* 2005 NR 147 {HC} where this Court held that it is not enough to authorise someone to depose to an affidavit as such authorisation does not mean at the same time that such person also has the authority to launch an application, or to bring any necessary proceedings.

[17] From all these facts and circumstances it must therefore be inferred that Mr VD Maharero was not authorised to bring this particular application.

¹ As all circumstances cannot be foreseen

[18] In such circumstances the application falls to be dismissed.

H GEIER
Judge

APPEARANCES

APPLICANT: J Ncube (with him M Ndlovu)
Government Attorney,
Windhoek.

THIRD RESPONDENT: KNG Kangueehi
Hengari, Kangueehi & Kavendjii Inc.,
Windhoek