



## LABOUR COURT OF NAMIBIA MAIN DIVISION, WINDHOEK

## JUDGMENT

Case no: LCA 76/2011

In the matter between:

**THE COUNCIL FOR THE MUNICIPALITY  
OF WALVIS BAY****APPELLANT**

and

**VICTOR KANGUMU****RESPONDENT**

**Neutral citation:** *The Council for the Municipality of Walvis Bay vs Kangumu* (LCA 76/2011) [2014] NALCMD 8 (21 February 2014)

**Coram:** PARKER AJ

**Heard:** 29 November 2013

**Delivered:** 21 February 2014

**Flynote:** Labour Law – Parties – Locus standi – Local authorities – Municipality established in terms of the Local Authorities Act 23 of 1992 has no legal personality and accordingly no locus standi *in judicio* – Court held that the arbitrator by according locus standi to the municipality of Walvis Bay in making the arbitration award erred in law and it is such a kind as the court should not countenance or perpetuate and for which the court is entitled to set aside the award.

**Summary:** Labour Law – Parties – Locus standi – Municipality established in terms of the Local Authorities Act 23 of 1992 has no legal personality and

accordingly no locus standi *in judicio* – The appellant set out in its notice of appeal grounds that by according locus standi to the municipality of Walvis Bay the arbitrator erred in law – The court decided to consider the question of locus standi before considering the merits because a decision in favour of the appellant would be dispositive of the entire appeal – The court found that a municipality established under the Local Authorities Act 23 of 1992 has no legal personality and therefore no locus standi *in judicio* – The court decided that although the question of law on locus standi had not been raised during conciliation and subsequent arbitration the appellant was entitled to set it out as a ground in the notice of appeal because it answer to ‘any question of law’ within the meaning of s 89(1)(a) of the Labour Act 11 of 2007 – The court found for the appellant as respects those grounds based on locus standi set out in the notice of appeal – Consequently, the court upheld the appeal and set aside the arbitration award.

---

### ORDER

---

- (a) The appeal succeeds and the arbitration award, together with any variation thereof, under case no. CRWB60-11 is set aside.
- (b) Each party is to pay its or his own costs.

---

### JUDGMENT

---

PARKER AJ:

[1] In this matter the appellant, a local authority council, established in terms of the Local Authorities Act 23 of 1992, has noted an appeal against the arbitration award (including any variation thereof) under case no. CRWB60-11. The respondent is an employee of the appellant. Mr Heathcote SC (assisted by Mr Van Vuuren)

represents the appellant, and the appellant represents himself. As I understand it, the respondent is a lawyer as he has a law degree, but he is not a legal practitioner.

[2] In the notice of appeal noted by the appellant, the appellant, in terms of rule 17(2) of the Labour Court Rules, sets out a school of questions of law within the meaning of s 89(1)(a) of the Labour Act 11 of 2007. The first three grounds are intertwined and they concern the question of locus standi ('the locus standi grounds'). The locus standi grounds are perforce considered first because if the court upheld those grounds that would be dispositive of the entire appeal.

[3] As required by rule 17(16) of the Labour Court Rules, the respondent filed a notice of intention to oppose and a statement of grounds of opposition to the appeal. Barely four days thereafter he filed what he called 'Respondent's further statement of grounds of opposition to appeal'. They are the respondent's response to the appellant's aforementioned grounds of appeal.

[4] Mr Heathcote's submission on the locus standi grounds is basically an elaboration of what the appellant had clearly and sufficiently set out in the notice of appeal. Mr Heathcote's crisp and concise submission is briefly this. The party that the respondent cited in his referral of complaint to the Labour Commissioner and before the conciliation proceeding and the subsequent arbitral proceeding was the Municipality of Walvis Bay. The Municipality of Walvis Bay refers to a geographical area which has no capacity to sue or be sued. The Municipal area of Walvis Bay had, and has, no locus standi in the conciliation proceeding and the arbitral proceeding. A clear distinction exists in the Local Authorities Act between a municipal area and the council, which is its governing body and which has legal personality. Indeed, counsel's submission is primarily an interpretation and application of the s 1, read with s 3(1) and s 6(1) and (3), of the Local Authorities Act, and read in turn with art 102(3) of the Namibian Constitution.

[5] What is the respondent's response to appellant's locus standi grounds? Only this: The arbitrator did not err in law because 'such argument' was never raised by the appellant either in conciliation or in arbitration and so the appellant cannot raise it

in this proceeding. Thus, for the respondent, the appellant is, accordingly, estopped. And furthermore, it is the respondent's response that the appellant 'did not suffer potential prejudice since the appellant's Human Resource Manager, as assigned, appeared on behalf of the Appellant'.

[6] In determining the locus standi grounds I must answer the following two significant questions 'Yes' or 'No': (a) Are the appellant's locus standi grounds sustainable in law? (b) Can a question of law not raised by a party in conciliation and subsequent arbitration be raised on appeal as a question of law in terms of s 89(1)(a) of the Labour Act?

[7] As to Question (a); *The Municipality of Walvis Bay v The Occupiers of the Caravan Sites at Long Beach Caravan Park Walvis Bay, Republic of Namibia* 2005 NR 207 tells us that a municipality has no legal personality and therefore no locus standi in terms of the Local Authorities Act 23 of 1992. Accordingly, as a matter of law, a municipality cannot sue or be sued. The entity which is clothed with legal personality by the aforementioned provisions of the Local Authorities Act, read with the aforementioned article of the Namibian Constitution, is the particular local authority council. The width of the wording of those provisions compels this conclusion. And common sense tells me that a geographical area is not synonymous with the governing body of that geographical area. It is with confidence, therefore, that I hold that in terms of the Local Authorities Act only a local authority council has locus standi *in judicio*. I should have said so if I had not looked at *The Municipality of Walvis Bay v The Occupiers of the Caravan Sites at Long Beach Caravan Park Walvis Bay*. But when I look at this case I feel no doubt – none at all – that the Municipality of Walvis Bay has no locus standi *in judicio*. A municipality has no legal personality: it cannot sue or be sued.

[8] As respects Question (b) I express these reasoning and conclusions. And the starting point is the interpretation and application of 89(1)(a) of the Labour Act which governs an appeal such as the present. A party to a dispute (under the Labour Act) is entitled to appeal to the Labour Court against an arbitrator's award made in terms of s 86 '(a) *any* question of law only'. (Italicized for emphasis). The adjective 'any'

qualifying 'question of law' is significant. The word 'any' is not insignificant, neither is it aleatory: it shows indubitably that the question of law that an appellant may, in terms of s 89(1)(a) of the Labour Act, appeal on is not restricted to those questions that the party had raised during conciliation or subsequent arbitration. The only qualification is that such question of law should have been set out as a ground in the notice of appeal in terms of rule 17(2) of the Labour Court Rules. In this proceeding the appellant has raised the question of locus standi in the form of the locus standi grounds in the notice of appeal in compliance with rule 17(2) of the Labour Court Rules.

[9] Accordingly, I accept Mr Heathcote's submission that by making an award against an entity which has no locus standing the arbitrator erred on the law; and I should say that it is such a kind as this court, sitting as an appeal court, should not countenance or perpetuate, and it is such a kind as to entitle the court to set aside the award that the arbitrator made. We are reminded by the high authority of O'Linn AJA on the dangers attendant upon the court's failure to apply the law and rules in a passage in *Minister of Home Affairs, Minister Ekandjo v Van der Berg* 2008 (2) NR 548 (SC) at 561G. It is that '... if the Courts do not apply the rules and the law, the rule of law will be abrogated and justice will be unattainable'. And the point must also be made that the appellant in the present proceeding bears no burden – none at all – to establish that by the arbitrator according locus standi to the Municipality of Walvis Bay the appellant has been prejudiced thereby, as the respondent appears to submit.

[10] Based on all these reasoning and conclusions my answer to both Question (a) and Question (b) is 'Yes'! It follows indubitably that I should uphold the appeal; whereupon, I make the following order:

- (a) The appeal succeeds and the arbitration award, together with any variation thereof, under case no. CRWB60-11 is set aside.
- (b) Each party is to pay its or his own costs.

6  
6  
6  
6  
6

-----

C Parker  
Acting Judge

APPEARANCES

APPELLANT: R Heathcote SC  
A Van Vuuren  
Instructed by Metcalfe Attorneys, Windhoek

RESPONDENT: In person