



LABOUR COURT OF NAMIBIA MAIN DIVISION, WINDHOEK

JUDGMENT

Case no: LCA 61/2014

In the matter between:

TRANSNAMIB HOLDINGS LIMITED

APPELLANT

And

THOMAS AMUKWELELE

FIRST RESPONDENT

AKSEL MAGONGO

SECOND RESPONDENT

Neutral citation: *Transnamib Holdings Ltd vs Amukwelele* (LCA 61-2014) [2015]
NALCMD 21 (17 September 2015)

Coram: PARKER AJ

Heard: 26 June 2015

Delivered: 17 September 2015

Flynote: Labour law – Labour court – Appeal from arbitration award – Appellant must comply with peremptory requirements under s 89 of the Labour Act 11 of 2007 and rule 17(2) and (3) of the Labour Court Rules and rule 23(2) of the Rules Relating to the Conduct of Conciliation and Arbitration before the Labour Commissioner – Respondent must also comply with rule 17(16) of the Labour Court Rules – Court held that the purpose of the appellant’s notice and grounds of appeal in terms of the Labour Court Rules and the Rules Relating to the Conduct of Conciliation and

Arbitration before the Labour Commissioner is to inform the respondent the case it has to meet – Likewise the purpose of the notice by the respondent and grounds for opposing the appeal in terms of the Labour Court Rules is to inform the appellant the case or opposition it has to meet – Purpose of the rules warrants the conclusion that those rules are preemptory – Failure to comply with them is therefore fatal – Court held that where no notice of intention to oppose the appeal and no statement stating the grounds on which the appeal is opposed are delivered the only inference that can reasonably be drawn is that the respondent does not oppose the appeal – In the nature of rule 17(16) of the rules of the court it is competent for the court to uphold such appeal if there is no good reason not to uphold it.

Summary: Labour law – Labour court – Appeal from arbitration award – Appellant must comply with preemptory requirements under s 89 of the Labour Act 11 of 2007 and rule 17(2) and (3) of the Labour Court Rules and rule 23(2) of the Rules Relating to the Conduct of Conciliation and Arbitration before the Labour Commissioner – Respondent must also comply with rule 17(16) of the Labour Court Rules – Court held that the purpose of the appellant’s notice and grounds of appeal in terms of the Labour Court Rules and the Rules Relating to the Conduct of Conciliation and Arbitration before the Labour Commissioner is to inform the respondent the case it has to meet – Likewise the purpose of the notice by the respondent and grounds for opposing the appeal in terms of the Labour Court Rules is to inform the appellant the case or opposition it has to meet – Purpose of the rules warrants the conclusion that those rules are preemptory – Failure to comply with them is therefore fatal – Court held that where no notice of intention to oppose the appeal and no statement stating the grounds on which the appeal is opposed are delivered the only inference that can reasonably be drawn is that the respondent does not oppose the appeal – In the nature of rule 17(16) of the rules of the court it is competent for the court to uphold such appeal – In the instant case court found that the respondent has not complied with rule 17(16) of the Labour Court Rules – Accordingly court concluded that the respondent does not oppose the appeal – Court upheld the appeal, there is no good reason not to uphold it.

ORDER

- (a) The appeal is upheld.
- (b) The arbitration award in Case No. CRWK 146-14 is set aside.
- (c) There is no order as to costs in favour of, or against, any party.

JUDGMENT

PARKER AJ:

[1] The appellant appeals from the arbitration award made in case number CRWK146-14 in favour of the respondents (employees). In an appeal under the Labour Act 11 of 2007, the appellant must file with the court a duly completed Form 11, in terms of rule 17(3) of the Labour Court Rules ('rules of the court'), being the notice of appeal. The notice must be accompanied by a duly completed Form LC41, in terms of rule 23(2) of the Rules Relating to the Conduct of Conciliation and Arbitration before the Labour Commissioner ('the conciliation and arbitration rules') (Government Notice No. 262 of 31 October 2008).

[2] Form 11 and Form LC41 contain the questions of law the appellant raises in the notice of appeal and the grounds upon which the appeal is based. Thus, an appellant is obliged by the Labour Act and the aforementioned rules to inform the respondent the case it has to meet. See *Pathcare Namibia (Ltd) v Du Plessis* (LCA 27/2011) [2013] NALCMD 28 (29 July 2013) (Unreported). By a parity of reasoning, the respondent who wishes to oppose the appeal must inform the appellant the grounds upon which he or she opposes the appeal, so that the appellant, too, may be informed of the case, that is the respondent's case or opposition, it has to meet.

[3] The practice of the court is firmly entrenched that where an appellant fails or refuses to comply with the peremptory requirements under the Act and the aforementioned rules the result is a dismissal of the appeal on the basis that there would be no appeal properly before the court for the court to consider. See, eg, *African Consulting Services CC v Gideon* (LCA 60/2012) [2013] NALCMD 43 (26 November 2013); and *Du Plessis*. I see no good reason why the same conclusion should not follow where the respondent has refused or failed to deliver a notice to the appellant of his or her intention to oppose the appeal and has also failed and refused to deliver a statement stating the grounds on which he or she opposes the appeal, together with any relevant documents, in terms of rule 17(16) of the Labour Court Rules. Subrule 17(16), too, is without a doubt, peremptory, considering its underlying purpose, which I have stated previously.

[4] In the instant proceeding the respondents have not done that which they must do in terms of the peremptory provisions of rule 17(16) of the aforementioned rules. For this reason, Mr Philander, counsel for the appellant submits that the 'respondents have not opposed the appeal. Nor have grounds of opposition been filed subsequent to the filling of the Appeal record'. I did not hear Mr Rukoro, counsel for the respondents, to say anything in response to this important submission. Besides, the respondents have not given any explanation why they refused or failed to act in terms of rule 17(16) of the rules of the court. I should say, this is not the kind of failure or refusal to comply with a rule of the court that the court is entitled to overlook, considering, as I have said more than once, the purpose of the rule warranting its peremptory effect.

[5] Where no notice of intention to oppose the appeal and no statement stating the grounds on which the appeal is opposed are delivered the only inference that can reasonably be drawn is that the respondent does not oppose the appeal. It is not always the case that just because a respondent does not oppose, for instance, an application the application should succeed. The same conclusion goes for an appeal. But in the nature of rule 17(16), being peremptory and substantial provisions, it is

competent for the court to uphold the appeal where the respondent has delivered no notice of his or her intention to oppose the appeal and has also not delivered a statement stating the grounds on which he or she opposes the appeal, and there is no good reason not to uphold it.

[6] Based on these reasons, I hold that the appeal is not opposed on any grounds and there is no good reason to reject it. The appeal should therefore succeed, and it succeeds; whereupon, I make the following order:

- (a) The appeal is upheld.
- (b) The arbitration award in Case No. CRWK 146-14 is set aside.
- (c) There is no order as to costs in favour of, or against, any party.

C Parker
Acting Judge

APPEARANCES

APPELLANT:

R Philander

Instructed by LorentzAngula Inc., Windhoek

RESPONDENTS:

S Rukoro

Instructed by Directorate of Legal Aid, Windhoek