REPUBLIC OF NAMIBIA

LABOUR COURT OF NAMIBIA MAIN DIVISION, WINDHOEK

JUDGMENT

Case no: LC 154/2015

In the matter between:

NEDBANK NAMIBIA LIMITED **APPLICANT**

And

THE NAMIBIA FINANCIAL INSTITUTIONS UNION (NAFINU) **FIRST RESPONDENT**

THE LABOUR COMMISSIONER **SECOND RESPONDENT**

Neutral citation: *Nedbank Namibia Limited v The Namibia Financial Institutions Union (*LC 154-2015) [2015] NALCMD 26 (02 November 2015)

Coram: UEITELE J

Heard: **30 October 2015**

Delivered: **02 November 2015**

Flynote: ***Practice*** - Judgments and orders - Application for stay of execution of an arbitration award/order pending appeal, extent to which Labour Act, 2007 has altered the common law.

Practice - Judgments and orders - Application to stay execution of arbitrator's award/order in terms of Labour Act, 2007 pending appeal - Factors to be taken into account by court, set out - Court granted order.

Summary: On 27 October 2015 the first respondent gave the applicant notice in terms of s 74(1)(d) of the Labour Act, 2007 of its intention to embark on industrial action as from 30 October 2015 at 07h30. The intended industrial action is motivated by unresolved dispute between the parties.

On receipt of the said notice, the applicant, a banking institution, brought an urgent application seeking an order staying an order granted by an arbitrator on 06 October 2015 pending the finalisation of an appeal launched by the applicant against the arbitration award.

Held that at common law the execution of a judgment or order is automatically suspended pending an appeal noted. In certain labour matters, the common law is altered on the noting of an appeal or when an application for review is made.

Held that the 'golden rule' of construction is that the language in an instrument is to be given its grammatical and ordinary meaning. It is also sound rule to construe a statute in conformity with the common law rather than against, unless otherwise stated in the statute.

Held further that the legislature only intended to alter the common law in so far as it relates to an individual other than an independent contractor. Therefore, s 89(6) does not find application in this matter and has not altered (in respect of this matter) the common law position.

Held further that the balance of hardship or convenience favoured the applicant and granted the application.

ORDER

(a) The applicant's non-compliance with the forms and service as provided for by the Rules of Court is condoned and this application is heard as one of urgency as contemplated in terms of the Labour Court Rules 6(24) and (25).

(b) The arbitration award / ruling issued under arbitration case number CRWK 359-15 on 06 October 2015 by the arbitrator Phillip Mwandingi is suspended pending the finalization of the appeal launched by the applicant on 14 October 2015.

(c) The order issued by this court on 03 June 2015 under case Number 85/2015 remains valid and of full force and effect.

(d) No order as to costs is made.

(e) The applicant must, (if it still wishes to pursue its appeal), as contemplated in the Labour Act, 2007 ensure that the record of the proceedings of 06 October 2015 is finalised and file with the registrar of this Court on or before 13 November 2015.

(f) The applicant must call for a meeting for the parties to meet at the registrar's office, on or before 21 November 2015, for the purposes of setting down the appeal hearing.

(g) The registrar is urged to set down the appeal hearing on or before 09 December 2015.

JUDGMENT

UEITELE J:

Introduction and Background.

[1] The applicant is Nedbank Namibia Limited a public company and a banking institution. It is registered under both the Companies Act, 2004[1] (as amended) and the Banking Institutions, 1998[2] (as amended). On 29 October 2015 the applicant approached this court on an urgent basis seeking the following relief:

> ‘1 The forms and service provided for in the rules of the above honourable court are dispensed with and the above mentioned matter is disposed of as one of urgency in terms of this application as one of urgency in terms of rule 6(24) of the aforesaid rules.
>
> 2 A *rule nisi* be issued, calling upon the respondents to show cause, if any, on a date to be determined by the above honourable court why an order in following terms should not be issued:
>
> 2.1 Any effect which the arbitration award alternatively, ruling issued on 06 October 2015 by the arbitrator Phillip Mwandingi under arbitration case number CRWK 359-15 is suspended and that the interim interdict granted by the above honourable court is of full force and effect until such time:
>
> 2.1.1 as the arbitration under arbitration case number CRWK 359-15 is finalised on the merits,

[1] Act No. 28 of 2004
[2] Act No. 2 of 1998

2.1.2 such time as the appeal to the above honourable court against the arbitration award, alternatively, ruling is dismissed.

2.2 The costs of this application shall be paid by any party opposing this application, such costs to include the costs of one instructing and two instructed counsel and should this application be opposed by more than one party such parties shall pay the costs of this application jointly and severally the one paying the other to be absolved such cost to include the cost of one instructed and two instructed counsel.

3. That the order in paragraph 2.1 shall operate as an interim interdict with immediate effect pending the return date.

4. Further and/or alternative.'

[2] The Namibia Financial Institutions Union of Namibia (Nafinu) which is an employees' trade union and which is registered with the Labour Commissioner under the Labour Act, 2007[3] , is the first respondent and it opposes the relief sought by the applicant. The events which led to this application are as follows:

(a) In November 2010 the applicant and the first respondent concluded a recognition agreement in terms of which salary negotiations were to be conducted annually.

(b) During February 2015 the parties commenced wage negotiations in respect of the salary increases for the year 2015. The parties held four different sessions on separate dates until the negotiations failed on 12 March 2015. When the negotiations failed the first respondent referred a dispute of interest to the Labour Commissioner under s 82 of the Act. The latter in turn appointed a conciliator to deal with the dispute. Conciliation meetings were held on four occasions in April 2015. But these meetings failed to resolve the dispute

[3] Act No. 11 of 2007.

between the parties. The conciliator then issued a certificate of unresolved dispute in terms of s 82(15) of the Act.

(c) After the conciliator had issued a certificate of unresolved dispute, the parties commenced negotiations on strike rules. They could not agree on these either. On 13 May 2015 the conciliator furnished the parties with strike rules in terms of s 76(2) of the Act. The first respondent then gave the applicant notice of its intention to proceed with a strike ballot process. On 20 May 2015 the employees of the applicant who are members of the first respondent overwhelmingly voted in favour of industrial action/ strike and on 29 May 2015 the first respondent gave the applicant notice that industrial action will commence on 3rd June 2015 at 07:30

(d) In the meantime, the applicant on 28 April 2015 referred a dispute to the Labour Commissioner under s 86 of the Act, complaining that the first respondent had refused to negotiate in good faith and had engaged in conduct which was subversive of orderly collective bargaining during the wage negotiations and thereafter.

(e) The notice of industrial prompted the applicant to, on 31 May 2015, launch an urgent application with the Labour Court under case number LC 8/ 2015 in which it amongst others sought an interdict to prevent the first respondent from calling out the strike, pending the determination of the dispute which it had referred to the Labour Commissioner on 28 April 2015. The matter came before the Labour Court on 2 June 2015. On the following day the Labour Court gave judgment and granted the following orders:[4]:

> ‘(a) That the applicant’s non-compliance with the forms and service as provided for by the Rules of Court is hereby condoned and this application is had as one of urgency as contemplated in terms of the Labour Court Rules 6(24) and (25)

[4]The case is still unreported but can found on SAFLII under *Nedbank Namibia Limited v The Namibia Financial Institutions Union (*LC 85-2015) [2015] NALCMD 12 (3 June 2015)

(b) That pending the finalisation of the dispute referred to the Labour Commissioner by the applicant on 28 April 2015 concerning the first respondent's conduct during the 2015 negotiations between the applicant and the first respondent, the first respondent and its office bearers and agents are interdicted and restrained from organising, causing, directing, inviting or encouraging any of the applicant's employees to embark on any industrial action.

(c) That pending the finalisation of the dispute referred to the Labour Commissioner by the applicant on 28 April 2015 concerning the first respondent's conduct during the 2015 wage negotiations between the applicant and the first respondents, the first respondents members employed by the applicant are interdicted from embarking on any industrial action.

(d) As far as costs are concerned I will not make any order as to costs.'

[3] The first respondent was not happy with the orders made by this court and it accordingly lodged an appeal against the orders of the Labour Court to the Supreme Court. It applied for and was granted leave for the appeal to be set down outside of the court terms provided for in the rules of the Supreme Court. The appeal was accordingly heard on 07 August 2015. On 19 August 2015 the Supreme Court handed down judgment striking the appeal from roll[5].

[4] After the first respondent's appeal was struck from the roll of the Supreme Court the dispute, referred to the Labour Commissioner on 28 April 2015 by the applicant was set down for conciliation before Mr. Phillip Mwandingi. During the conciliation meeting the first respondent raised a point *in limine* that the arbitrator lacked jurisdiction to preside over the matter. On 06 October 2016 the arbitrator, Mr. Mwandingi handed down his award/ruling. He amongst others said the following:

[5]The case is still unreported but can found on SAFLII under *Namibia Financial Institutions v Nedbank Namibia Ltd* (SA 26-2015) [2015] NASC (19 August 2015)

'It is therefore my finding that the respondent has made out a case that I lacked jurisdiction to preside over this matter and specifically the type of the relief being sought as another arbitrator/conciliator duly appointed by the Labour Commissioner is already seized with the same matter.

8 RULING

It is my order that:

This case, CRWK 359-15 is dismissed due to lack of jurisdiction as the same case is before another arbitrator.

This decision is final and binding on both parties and shall become an order of the Labour Court upon filling with that court by either party in terms of section 87(1)(b)(i) of the Labour Act, (Act 11 of 2007).'

[5] On the 14th of October 2015 the applicant gave notice that it will appeal against the arbitrator's ruling/order. The first respondent gave notice that it will oppose the applicant's appeal. On 13 October 2015 the applicant addressed a letter to the first respondent requesting the first respondent to agree to the stay of the award pending the outcome of the appeal. The first respondent responded to the applicant's letter of 13 October 2015 on 23 October 2015 stating that it will not agree to the stay of award pending the outcome of the appeal. On 27 October 2015 the first respondent gave the applicant notice in terms of s 74(1)(d) of its intention to embark on industrial action as from 30 October 2015 at 07h30. It is on receipt of the notice of industrial action that the applicant instituted the current proceedings.

The legal principles

[6] It is trite that the noting of an appeal has the effect of suspending execution of the judgment and order of the trial Court[6]. As it has been said by De Villiers JA this means that the judgment cannot be carried out and no effect can be given to that judgment whether the judgment is one for money or any other thing or for any form of relief granted by the court appealed from. In the matter of *South Cape Corporation*

[6] See *Reid and Another v Godart and Another,* 1938 AD 511 at p. 513

(Pty) Ltd v Engineering Management Services (Pty) Ltd[7] Corbett, J.A. said the following:

> '… it is today the accepted common law rule of practice in our Courts that generally the execution of a judgment is automatically suspended upon the noting of an appeal, with the result that, pending the appeal, the judgment cannot be carried out and no effect can be given thereto, except with the leave of the Court which granted the judgment. '.

[7] The Labour Act, 2007 has in respect of certain Labour matters changed that common law position. Section 89(6)-(9) of the Labour Act, 2007 provides as follows:

> '(6) When an appeal is noted in terms of subsection (1), or an application for review is made in terms of subsection (4), the appeal or application-
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> (a) operates to suspend any part of the award that is adverse to the interest of an employee; and
> (b) does not operate to suspend any part of the award that is adverse to the interest of an employer.
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> (7) An employer against whom an adverse award has been made may apply to the Labour Court for an order varying the effect of subsection (6), and the Court may make an appropriate order.
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> (8) When considering an application in terms of subsection (7), the Labour Court must-
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> (a) consider any irreparable harm that would result to the employee and employer respectively if the award, or any part of it, were suspended, or were not suspended;
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> (b) if the balance of irreparable harm favours neither the employer nor employee conclusively, determine the matter in favour of the employee.

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[7] 1977 (3) SA 534 (A) at 545 B

(9) The Labour Court may-

(a) order that all or any part of the award be suspended; and

(b) attach conditions to its order, including but not limited to-

(i) conditions requiring the payment of a monetary award into Court; or

(ii) the continuation of the employer's obligation to pay remuneration to the employee pending the determination of the appeal or review, even if the employee is not working during that time.'

Discussion

[8] The parties in this matter agreed that the matter is urgent and that I may dispense with the forms and service provided for in the rules of this court[8]. I accordingly heard the matter on an urgent basis. The applicant contends that at common law, when, on 14 October 2015, it noted its appeal against the arbitrator's award dated 06 October 2015 the effect of noting the appeal was to suspend the operation of the award, meaning that the dispute between the parties has not been finally resolved and the interdict issued by this court on 03 June 2015 is still operational.

[9] The first respondent on the other hand contends that the common law principles do not apply to this appeal. It further argued that section 89(7) will not avail applicant in these proceedings. It argued that suspending the award will achieve nothing because the right to strike is not derived from the award but from the fact that it is in compliance with chapter 7 of the Act. Once the interdict by this Court fell away, when the arbitrator finalised the dispute before him, there is nothing that can lawfully stop the strike so the firs respondent contended.

[10] The starting point to resolve the two opposing views is the interpretation of s 89(6) of the Labour Act, 2007. It has long been accepted that the correct approach to

[8] In particular Rule 6 (24) & (25)

interpret any legal instrument is to give the words in that instrument their ordinary grammatical meaning. In the matter of *Venter v R*[9] Innes CJ held that:

> 'By far the most important rule to guide courts in arriving at that intention is to take the language of the instrument, or of the relevant portion of the instrument, as a whole; and, when the words are clear and unambiguous, to place upon them their grammatical construction and give them their ordinary effect.'

[11] The above pronouncements were approved by the full bench of this court in the matter of *Van As and Another v Prosecutor-General*[10] Levy, AJ said:

> 'It is true that a Court must start with the interpretation of any written document whether it be a Constitution, a statute, a contract or a will by giving the words therein contained their ordinary literal meaning. The Court must ascertain the intention of the legislator or authors of document concerned and there is no reason to believe that the framers of a Constitution will not use words in their ordinary and literal sense to express that intention.'

[12] See also the matter of *Jacob Alexander v The Minister of Justice and others*[11]: where Parker J said:

> '… it is trite that in interpreting statute, recourse should first be had to the golden rule of construction. In *Paxton v Namibia Rand Desert Trails (Pty) Ltd* 1996 NR 109 at 111A-C, and *Sheehama v Inspector-General of Namibia Police* 2006 (1) NR 106 at 114G-I, this Court relied on the restatement of the golden rule by Joubert, JA in *Adampol (Pty) Ltd v Administrator, Transvaal* 1989 (3) SA 800 (A) at 804B-C in the following passage:
>
> > "The plain meaning of the language in a statute is the safest guide to follow in construing the statute. According to the golden or general rule of construction the words of a statute must be given their ordinary, literal and grammatical meaning and if by so doing it is ascertained that the words are clear and unambiguous,

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9 *Venter v R* 1907 TS 910 at 913.
10 2000 NR 271 (HC) at 278.
11 An unreported judgment of this Court Case No.:A210/2007 delivered on at p.18

> then effect should be given to their ordinary meaning unless it is apparent that such a literal construction falls within one of those exceptional cases in which it would be permissible for a court of law to depart from such a literal construction, e.g. where it leads to a manifest absurdity, inconsistency, hardship or a result contrary to the legislative intent. See *Venter v Rex* 1907 TS 910 at 913-14, *Johannesburg Municipality v Cohen's Trustees* 1909 TS 811 at 813-14, *Senker v The Master and Another* 1936 AD 136 at 142; *Ebrahim v Minister of The Interior* 1977 (1) SA 665 (A) at 678A-G.'

[13] The question therefore is whether the ordinary and literal sense of the words "that is adverse to the interest of an employee …" is capable of more than one meaning. I do not think so. I say so for the following reasons. The Labour Act, 2007 in section 1 defines an employee as follows:

> '***"employee***" means an individual, other than an independent contractor, who-
>
> (a) works for another person and who receives, or is entitled to receive, remuneration for that work; or
>
> (b) in any manner assists in carrying on or conducting the business of an employer;'

[14] In the matter of *Johannesburg Municipality v Cohen's Trustees*[12] Solomon J observed that:

> 'It is a sound rule to construe a statute in conformity with the common law rather than against it, except where or in so far as a statute is plainly intended to alter the course of the common law.'

In the English case of *Maunsell v Olins*[13] Lord Simon in his dissenting speech said the following:

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12 1909 TS 811 at 823

13 (1975) 1 All ER 16 at 28 - 29:

> ‘Whatever subsisting scope any canon of construction may have, whereby there is a presumption against change of the common law, it is clearly a secondary canon... of assistance to resolve any doubt which remains after the application of 'the first and most elementary rule of construction' that statutory language must always be given presumptively the most natural and ordinary meaning which is appropriate in the circumstances. Moreover, even at the stage when it may be invoked to resolve a doubt, any canon of construction against invasion of the common law may have to compete with other secondary canons. English law has not yet fixed any hierarchy amongst the secondary canons: indeed, which is to have paramountcy in any particular case is likely to depend on all the circumstances of the particular case.’

[15] In the light of the authorities that I have referred to in the preceding paragraphs I am of the view that that the legislature only intended to alter the common law regarding the effect of noting an appeal as it relates to an individual other than an independent contractor, who works for another person and who receives, or is entitled to receive, remuneration for that work; or who in any manner assists in carrying on or conducting the business of an employer. In this matter the first respondent is not an individual but a trade union representing employees of the applicant, it is not an employee. It therefore follows that s 89(6) does not find application in this matter and has therefore not altered (in respect of this matter) the common law position that the effect of the noting of an appeal is to suspend the execution of the judgment or order of the trial court.

[16] I therefore do not agree with the contention by the first respondent that suspending the arbitration award dated 06 October 2015 will achieve nothing because the right to strike is not derived from the award but from the fact that it is in compliance with chapter 7 of the Act. What that argument overlooks is the fact that if the arbitration award dated 06 October 2015 is suspended this means that the dispute between the parties remains unresolved and the interdict issued by this court on 03 June 2015 is still in force.

[17] Even if I am wrong in my conclusion that s 89(6) is not applicable to this matter, s 89(7) empowers this court to vary the effect of that subsection (i.e. s 89(6)).

I am aware of the views expressed by Heathcote AJ[14] (as he then was) that there appears to be different approaches emanating from this court as to which test is applicable when an application in terms of s 87(7) is considered.[15]

[18] In my view the decisions referred to by Heathcote AJ were made under the repealed Labour Act, 1992[16] which did not have a provision which is similar to the current s 89(8). The question as to which test is applicable does, in my view, not arise in the present matter because the Labour Act, 2007 specifically provides what the court must take into account when it considers an application under s 89(7). Section 89(8) of the Labour Act, 2007 provides that this court ***must,*** when it considers whether to vary or not to vary the effect of s 89(6), consider any irreparable harm that would result to the employee and employer respectively if the award, or any part of it, were suspended, or were not suspended and if the balance of irreparable harm favours neither the employer nor employee conclusively, determine the matter in favour of the employee.

The irreparable harm or prejudice

[19] Mr Heathcote who appeared for the applicant argued that the arbitrator when he made the award on 06 October 2015 misconceived the legal principles applicable to the dispute that he had to determine. He further argued that the arbitrator could not determine the merits of the dispute once he had ruled that he had no jurisdiction to preside over the matter. He accordingly submitted that the applicant has excellent prospects of success at the hearing of the appeal.

[20] Mr Marcus who appeared for the first respondent on the other hand argued that once the arbitrator had made a ruling, that ruling is final and binding on the parties. He further argued that s 89(7) of the Labour Act cannot avail the applicant, he said it (s 89(7)) can never apply to a case where the first respondent, has

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[14] In the matter of *Samicor Diamond Mining Ltd V Hercules* 2010 (1) NR 304 (HC)

[15] Heathcote AJ refers to decision, in *Rössing Uranium Ltd v Cloete and Another* 1999 NR 98 (LC) (NLLP 2002 (2) 3 (NLC)), Mtambanengwe J, and the decision by Hannah J, in *Transnamib Holdings Ltd v Cartstens* 2003 NR 213 (LC) (NLLP H 2004 (4) 209 (NLC))

[16] Act No 6 of 1992

complied with the requirements for holding a lawful strike. He submitted that this Court has no power to stop a lawful strike. He further submitted that in this matter the only 'weapon' employees have in the bargaining process is to lawfully withhold their labour as a means of forcing the employer to consider their demands. He thus argued that when the court interdicts a lawful strike the court in essence interferes with the bargaining process and denies the employees their fundamental right to strike and thereby causes them irreparable harm and prejudice.

[21] I briefly digress here and state that Mr Marcus's argument (that the courts interfere with the bargaining process) overlooks the following aspect, Article 1 of the Namibian Constitution amongst others states that:

> '(1) The Republic of Namibia is hereby established as a sovereign, secular, democratic and unitary State founded upon the principles of democracy, the rule of law and justice for all.
>
> (2) …
>
> (3) The main organs of the State shall be the Executive, the Legislature and the Judiciary.
>
> (6) This Constitution shall be the Supreme Law of Namibia';

[22] The late Mahomed CJ[17] defines a State as a:

> '.collective associations of human beings who have chosen to regulate their relations with one another, individually and collectively, through the instrument and the rule of objective laws equally binding on them.'

He goes on to say,

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[17] In an article, titled *'The Role of the Judiciary in a Constitutional State'*, SALJ 1998 vol 115, at 111

'this necessarily carries with it a legislative function to make such laws, an executive and administrative function to give effect to the laws, and a judicial function to adjudicate disputes which arise in consequence of these functions.'

He went further again and said:

'Ever-expanding and increasingly complex disputes arise from the exercise of legislative or executive or administrative functions by the State itself. It would therefore be clearly unacceptable for the legislature or the executive itself to determine whether or not it has been guilty of acting unlawfully against the individual who feels aggrieved by its conduct. The legislature and the executive would correctly not be perceived to have either the objectivity or the skills necessary to make such an adjudication. It is for this reason, among many others, that all democratic societies insist that disputes should be adjudicated by an independent arm of the state, in the form of a judiciary, *with a capacity for impartiality and skills special to the resolution and adjudication of conflicting interests and forces*. The exact boundaries of judicial power have varied from time to time and from country to country, *but the principle of an independent judiciary goes to the very heart of sustainable democracy based on the rule of law. Subvert it and you subvert the very foundations of the civilization which it protects.*' (Italicised and underlined for emphasis)

I am therefore of the view that Mr Marcus' argument that the when court issues an order interdicting a strike it is interfering with the bargaining process is misplaced. What the court does is to perform its constitutional duty to adjudicate conflicting interests.

[23] I now return to consider what the Labour Act, 2007 enjoins me to consider when I consider whether to vary or not to vary the effect of s 89(6), namely the irreparable harm that a party may suffer if the order or award is stayed or not stayed. The applicant in its founding affidavit stated that it stands to suffer financial losses of N$ 2 million per day. If the processing department also participates in the strike, an extra N$ 10 million per day could be expected. As a result, roughly estimated, the applicant could suffer a loss of N$ 12 million per day.

[24] The applicant furthermore stated that it earns interest and fees on each and every Automatic Teller Machines (ATM) transactions. The applicant has hundreds of ATM's. If a certain ATM is not being serviced and it cannot provide the required services to its clients, the applicant suffers a financial loss on each and every ATM transaction that would have taken place had the ATM been in operation. The same applies to teller transactions, forex transactions and various other types of transactions. It concluded by stating that the magnitude of the financial losses which the applicant shall suffer are substantial to the extent that the first respondent shall not be in a financial position to reimburse the applicant. The applicant furthermore stated that apart from the substantial financial losses which it will suffer it will suffer reputational damages which damages will be very difficult to quantify, if at all possible.

[25] The first respondent does not deny that the applicant will suffer the harm and damages which it alleges it will suffer. What the first respondent say is that the allegations that the balance of convenience is in favour of the applicant are irrelevant, since the strike is lawful and this Court does not have the power to stop a lawful strike. The first respondent proceeded to contend that the strike action is the workers' only weapon and that the object of a strike is after all to cause and inflict economic disruption, provided it is done within the confines of the law. The first respondent furthermore contended that the court cannot grant an interdict stopping a lawful strike. It would amount to a denial by this court of a fundamental right to the workers. The first respondent contends that even a temporary denial of a fundamental right amounts to irreparable harm.

[26] I have above dealt with the role of courts namely that it is to adjudicate disputes between parties. I also indicated that when courts adjudicate disputes they do not interfere or deny a party its fundamental rights but express themselves as to how a dispute must be resolved in accordance with the law. In my view the first respondent have not place facts before me to indicate what irreparable harm it will suffer if I were to suspend the arbitrator's order of 06 October 2015. The applicant

has placed facts before me to indicate the harm it will suffer if I do not suspend the operation of the arbitrator's order of 06 October 2015. I am thus of the view that, having regard to all the circumstances of this application, the possible irreparable harm to be suffered by any of the parties favours the applicant.

[27] I am cognisant of the pronouncement by the Supreme Court[18] that:

> 'The statutory intention behind the new regime of arbitration of disputes is clearly that Labour disputes would be determined with all due speed and not subject to delays which had previously characterised court proceedings. This underlying statutory intention was explained in earlier Labour Court proceedings:
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> > 'But the Act did away with district labour courts. It placed greater emphasis on conciliation and, of importance in this context, it brought about a new regime of arbitration of disputes by specialised arbitration tribunals operating under the auspices of the Labour Commissioner. The provisions dealing with these tribunals in Part C of the Act place emphasis upon expediting the finalisation of disputes and upon the informality of those proceedings. The restriction of participation of legal practitioners and the range of time limits for bringing and completing proceedings demonstrate this. Arbitrators are enjoined to determine matters fairly and quickly and deal with the substantial merits of disputes with a minimum of legal formalities.
>
> The overriding intention of the legislature concerning the resolution of disputes is that this should be achieved with a minimum of legal formality and with due speed. This is not only laudable but particularly appropriate to labour issues. I stress that it is within this context that the Act places greater emphasis on alternative dispute resolution and confines the issues to be adjudicated upon by this court (in terms of) s 117'.[19]

[28] Section 89 (9) of the Labour Act reads as follows:

> '(9) The Labour Court may-

[18] In the matter of *Namibia Financial Institutions v Nedbank Namibia Ltd* (SA 26-2015) [2015] NASC (19 August 2015) at para 23.
[19] *Meatco, supra*, para 24 quoting *Namdeb Diamond Corporation v Mineworkers Union of Namibia and Others* Case No LC 103/2011, unreported 13/04/2012.

(a) order that all or any part of the award be suspended; and

(b) attach conditions to its order, including but not limited to-

(i) conditions requiring the payment of a monetary award into Court; or

(ii) the continuation of the employer's obligation to pay remuneration to the employee pending the determination of the appeal or review, even if the employee is not working during that time.'

In therefore find it appropriate to attach conditions which are aimed at expediting the hearing of the appeal to the order that I intend to make in the following paragraph.

[29] I am satisfied that applicant has made out a case as prayed for in its notice of motion and I make the following order:

1 The applicant's non-compliance with the forms and service as provided for by the Rules of Court is condoned and this application is heard as one of urgency as contemplated in terms of the Labour Court Rules 6(24) and (25).

2 The arbitration award / ruling issued under arbitration case number CRWK 359-15 on 06 October 2015 by the arbitrator Phillip Mwandingi is suspended pending the finalization of the appeal launched by the applicant on 14 October 2015.

3 The order issued by this court on 03 June 2015 under case Number 85/2015 remains valid and of full force and effect.

4 No order as to costs is made.

5 The applicant must, (if it still wishes to pursue its appeal), as contemplated in the Labour Act, 2007 ensure that the record of the proceedings of 06 October 2015 is finalised and file with the registrar of this Court on or before 13 November 2015.

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6 The applicant must call for a meeting for the parties to meet at the registrar's office, on or before 21 November 2015, for the purposes of setting down the appeal hearing.

7 The registrar is urged to set down the appeal hearing on or before 09 December 2015.

S F I Ueitele
Judge

APPEARANCES

APPLICANT:	Mr Raymond Heathcote assisted by Ms De Jagger Instructed by Gabriel Francois Köpplinger. Windhoek
FIRST RESPONDENT:	Mr Nixon Marcus assisted by Ms Rachel Mondo Instructed by The Namibia Financial Institutions Union, Windhoek