

“ANNEXURE 11”  
Practice Directive 61

**IN THE LABOUR COURT OF NAMIBIA**

<b>Case Title:</b> NAMIBIA PROTECTION SERVICES (PTY) LTD v MARTIN MUPUNGA	<b>Case No:</b> HC-MD-LAB-APP-AAA-2018/00057
	<b>Division of Court:</b> LABOUR COURT (MAIN DIVISION)
<b>Heard before:</b> CLAASEN A J	<b>Date of hearing:</b> 22 March 2019
	<b>Delivered on:</b> 10 April 2019
<b>Neutral citation:</b> <i>Namibia Protection Services (PTY) LTD v Mupunga</i> HC-MD-LAB-APP-AAA-2018/00057 [2019] NALCMD 11 ( 10 April 2019)	
<b>Results on merits:</b> On the merits.	
<b>The order:</b> Having heard <b>Mr T Muhongo</b> for the applicant and having read the documents filed of record:  <b>IT IS ORDERED THAT:</b> <ol style="list-style-type: none"><li>1. The appeal is upheld and the arbitrator’s award dated 15 October 2018 is set aside.</li><li>2. No order as to cost is made.</li></ol>	
<b>Reasons for orders:</b>	
<p>[1] This is an appeal against an award of an arbitrator, handed down on 15 October 2018 by the second respondent in favour of the first respondent. The appeal was not opposed by the respondents.</p> <p>[2] The appellant, Namibia Protection Services (Pty) Ltd is in the business of providing security services in Namibia. The first respondent is employed by the appellant. On 3 January 2018 the first respondent referred a dispute to the Labour Commissioner on the grounds of unilateral change of terms and conditions, unfair discrimination and unfair labour practice.</p> <p>[3] The background of the matter is that the first respondent commenced employment on 10 November 2016 in the position of Duty Manager. According to him was he demoted soon thereafter to work in Human</p>	

Resources and thereafter demoted to work as a supervisor at various sites in Windhoek. The changes were accompanied by a monthly reduction in salary from N\$4800.00 to N\$3000.00. An additional dispute arose as a result of the first respondent's leave that was taken from 30 November 2017 until 6 December 2017. Upon his return to the office, disciplinary proceedings were instituted for absenteeism. This resulted in a final warning and a demotion to the position of a guard. Aggrieved by this, the first respondent referred the dispute to the Labour Commissioner.

[4] The appellant's contention was that the first respondent was transferred as a result of poor performance which translated into the lower salary ranks. In respect of the leave days taken, the employers' position is that the leave was not approved which culminated in the disciplinary proceedings.

[5] The arbitrator conducted conciliation and arbitration proceedings and gave an award to reinstate the first respondent in the position of Duty Manager with the same terms, benefits and conditions, and employer to pay an amount of N\$ 30 720-00 as an underpayment to the first respondent.

[6] The appellant's appeal was based on the issue of lapsing of the appeal and that the arbitrator thus, had no jurisdiction to deal with the matter. I now move on to consider whether the appellant grounds of appeal has merit.

[7] In turning to the law on the point, s 86(2)<sup>1</sup> provides that a party may refer a dispute to the Labour Commissioner within one year of the dispute arising. In *Luderitz Town Council v Shipepe*<sup>2</sup> it was held that an arbitrator has no jurisdiction to hear a dispute that arose outside the one-year time limit.

[8] I now apply the above principles to the evidence. The LC 21 form submitted by the first respondent to the Labour Commissioner indicates that the date of referral of the dispute was 3 January 2018. On the first respondent's own version, there is no doubt that the cause of the dispute arose in November 2016 as it was during that same month that he was unilaterally demoted from the position of Duty Manager to a position in the Human Resources Department. Clearly the referral of the dispute falls outside the time limit of 12 months as prescribed.

[9] Although the issue of prescription was not raised in the arbitration proceedings, it does not mean the court should perpetuate illegality committed by the arbitrator by hearing the dispute which he had no jurisdiction to do so. The authority for the position accepted by this court is to be found in *Standard Bank v Grace* and

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<sup>1</sup> Section 86(2) of Act 11 of 2007

<sup>2</sup> (LCA 42/2012) [2013] NALCMD 9 (2013)

another.<sup>3</sup>

[10] In the premises the appeal is upheld and the arbitrator's award dated 15 October 2018 is set aside.

Judge's signature:	Note to the parties:
	Not applicable.
Counsel:	
Appellant	Respondent
<i>Mr T Muhongo</i> <i>Instructed by Kopplinger Boltman Legal</i> <i>Practitioners</i>	

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<sup>3</sup> (LCA 42/2010 ) [2011] NALC 22 ( 12 August 2011)