

REPUBLIC OF NAMIBIA



LABOUR COURT OF NAMIBIA NORTHERN LOCAL DIVISION, OSHAKATI

REASONS

In the matter between:
2021/00002

Case no: HC-NLD-LAB-APP-AAA-

SOS CHILDREN VILLAGE

APPELLANT

and

SELMA UYUMBA

RESPONDENT

Neutral citation: *SOS Children Village v Uyumba* (HC-NLD-LAB-APP-AAA-2021/00002) [2021] NALCNLD 2 (21 June 2021)

Coram: SMALL AJ

Heard: 8 and 15 June 2021

Delivered: 15 June 2021

Released: 21 June 2021

ORDER

1. The request for a postponement of the hearing of the appeal is refused.
2. The reasons for the aforesaid ruling will be delivered and released on or before 21 June 2021.
3. The matter is struck from the roll: Case Finalized.

REASONS

[1] On 15 June 2021 I issued the following order:

1. The request for a postponement of the hearing of the appeal is refused.
2. The reasons for the aforesaid ruling will be delivered and released on or before 21 June 2021.
3. The matter is struck from the roll:

What follows are the reasons.

[2] In the aforesaid judgment I will refer to SOS Childrens Village Ondangwa as the applicant/appellant and to Selma Uyumba as the respondent

[3] On 25 September 2020 the arbitrator made the following order against applicant in favour of the respondent:

- (a) That the applicant's /appellant's dismissal or the respondent was substantially unfair
- (b) That the respondent must be reinstated in a similar position or comparable position as she had prior to her dismissal. The reinstatement to take effect from 1 October 2020.
- (c) That the applicant/appellant must pay the respondent an amount of N\$ 40 713.75 (thus being her salary for 7 months) as a compensation of loss of income to the Bank

Account known by the applicant/appellant.

[4] Underneath the aforesaid order the following notification was added: This Arbitration Award is final and binding on both parties hereto and may be filed with the Labour Court by any interested party in accordance with Section 97 of the Labour Act (Act 11 of 2007) to be made a court order.

[5] Rule 17 deals with appeals. In terms of rule 17(4) the notice of appeal should be delivered within 30 days after the award, decision or compliance order came to the attention of the appellant.¹ The decision appealed against was given on 25 September 2020. In the absence of an indication otherwise it is accepted the applicant was aware of the aforesaid award on the same date. Excluding the first day and including the last ordinary day, to fall within the 30-day period the notice of appeal had to be delivered on or before 26 October 2020. If such notice of appeal were filed on that date the 90-day period in which the appeal had to be prosecuted would have had would have expired on 25 January 2021.

[6] On this matter there is simply nothing whatsoever indicating that applicant intended appealing against any part of the award before 30 March 2021. On that date the legal representative of the applicant/applicant filed a notice of appeal pursuant to Section 117(1)(a)(ii), read with Section 89(1)(a) of the Labour Act, 2007, against the entire award issued by arbitrator, Ms. Nikanor Maevo Shikangala dated 25 September 2020. It is not necessary to list the grounds of appeal for this judgment. This appeal was clearly out of date.

[7] On the same date legal representative of the applicant/applicant filed a notice of motion in which the prayers were framed as follows:

‘This is an application in terms of the Labour Court Rules 15 in part and the relevant provisions of the Labour Act 11 of 2007. The Applicant seeks an order condoning its non-compliance with this Honourable Court's Rules in particular for:

¹ (4) The notice of appeal referred to in subrule (2) or (3) must be delivered within 30 days after the award, decision or compliance order appealed against came to the notice of the appellant.

- 1.1 An order condoning Applicant's non-compliance with Rule 23(2) of the Rules relating to the Conduct of Conciliation and Arbitration before the Labour Commissioner in terms of the Labour Act, 2007 (Act No. 11 of 2007) for the late noting of Appeal against the third Respondent's Award;
- 1.2 An order extending the period within which Applicant / Appellant must note its appeal in terms of Rule 15 of the Labour Court Rules of Namibia;
- 1.3 An order granting the Applicant leave to argue the appeal;
- 1.4 An order in terms whereof the arbitration award made under Case Number: NROS 32 - 20 on 25 September 2020, and registered as an Order of this Court (in terms of section 87(1)(b) of the Labour Act 11 of 2007) under Case Number: HC-MD-LAB-AA-2020/00039 on 5 October 2020, is rescinded; and
- 1.5 An order staying and interdicting the First, Second and Third respondents from executing and or implementing any and all processes including the writ of Execution against the movable properties and/or goods of the Applicant under case number HC-NLD-LAB-AA-2020/00039 in the above Honourable Court pending the outcome of this application and the finalisation of the appeal of the Applicant.'

[8] From the relief claimed it is apparent that applicant only filed its notice of appeal and the aforesaid application for condonation after the respondent attempted to enforce the award by the arbitrator.

[9] When the matter was called on 8 June 2021, being the date set for hearing of the matter, Mr. Nyambe who appears as instructed counsel for the legal representatives who filed the appeal and brought the application for condonation requested the Court to postpone the matter to enable applicant for file heads of argument as well as the record of the award hearing as is required by the rules.

[10] Although no record of the arbitration proceedings had been filed on e-justice for purposes of appeal, applicant's legal representatives requested a date for the hearing of the appeal on 18 May 2021. In *Katima Mulilo Town Council v Muyoba*², a judgement by Geier J warned that legal representatives who request a date for

² (HC-MD-LAB-APP-AAA-2017/00019) [2019] NALCMD 39 (20 September 2019)

hearing before filing the record on e-justice do so at their peril. This matter was thus placed on the court roll without a certified correct and complete copy of the pleadings, evidence and all documents necessary for the appeal being filed on e-justice.³

[11] On 8 June 2021 Mr Nyambe properly informed this Court that Respondent's attempt to have his award executed has been stayed pending the outcome of the appeal in separate proceedings before my sister Salionga J with the return date set for 16 June 2021. I therefore considered it appropriate to set date for the hearing of the application for condonation as well as the appeal for 15 June 2021.

[12] I pause here to point out that the Labour Act 11 of 2007 clearly intended to, amongst other objectives, '...to provide for the systematic prevention and resolution of labour disputes...'. If one considers the 30-day provided in which an appeal must be lodged, and the 90-day period in which such appeal must be prosecuted before it lapses, the Legislature intended to cut out any long-drawn-out disputes between employers and employees.

[13] On 15 June 2021, as no record had been filed on e-justice by the instructing legal representative, Mr Nyambe was again constrained to request another postponement to facilitate this. He had no instruction from his instructing legal representative as to why the record was not filed, nor could he indicate until when the appeal and applications were to be postponed.

[14] As a result of the aforesaid and as this was clearly to the prejudice of the respondent, I issued the following order:

1. The request for a postponement of the hearing of the appeal is refused.
2. The reasons for the aforesaid ruling will be delivered and released on or before 21 June 2021.

³ Ibid but especially paragraphs 52 and 59

3. The matter is struck from the roll: Case Finalized.

D. F. SMALL
Acting Judge

APPEARANCES

APPELLANT:

Mr M. Nyambe,
Of Mukaya Nyambe Inc, Ongwediva
Instructed by Uanivi Gaes Incorporated,
Windhoek.

RESPONDENT:

No appearance