REPUBLIC OF NAMIBIA

IN THE LABOUR COURT OF NAMIBIA,
MAIN DIVISION, WINDHOEK
JUDGMENT

Case Number: HC-MD-LAB-APP-AAA-2020/00038

In the matter between:

ABELI NGIXUANGENDELE	**1ST APPELLANT**
KENEDY MUTOTA	**2ND APPELLANT**

and

BASIL READ MINING (PTY) LTD	**1ST RESPONDENT**
ALEXINA MAZINZA MATENGU	**2NDRESPONDENT**

Neutral citation: *Nghixuangendele v Basil Read Mining (Pty) Ltd* (HC-MD-LAB-APP-AAA-2020/00038) [2022] NALCMD 11 (11 March 2022)

Coram:	RAKOW, J
Heard:	**28 January 2022**
Order delivered:	**8 March 2022**
Reasons delivered:	**11 March 2022**

Flynote: Labour Appeal – Labour Act 11 of 2007 – Appeal against the award issued by the arbitrator - Questions of Law - Section 89 – the case law on grounds of appeal restated - Court's interference with an arbitrator's decision - Appeal dismissed.

Summary: The appellants were employed as operators by the first respondent and were dismissed after they were found guilty on charges of misconduct for bribery, bringing the company's name in disrepute. The basis of the charges was that the appellants misrepresented to certain individuals that they either worked in the Human Resources Division of the first respondent or knew someone who worked in that division who can take their CVs and assist them in getting hired by the first respondent. This was subject to the concerned persons making payments to the appellants for a medical evaluation. When the deal went sour and the individuals did not get employment with the first respondent nor were they called for any medical evaluation, the individuals approached the police to enforce repayment of their money and later the supervisors I the employ of the first defendant. Disciplinary proceedings ensued and the appellants were subsequently dismissed. The appellants then approached the offices of the Labour Commissioner, where the arbitrator held that the decision by the first respondent to dismiss the appellants was procedurally and substantially fair.

The appellants now appeal against the award issued by the arbitrator. The first respondent opposed the appeal and took issue with the grounds of appeal, in that they were not questions of law.

Held that, the grounds of appeal are not grounds raised as grounds in law, as they do not meet the standard that must be contained in a ground raised on appeal.

Held further that, the court can only interfere with the decision of an arbitrator if the court believes that the arbitrator came to a conclusion that no other reasonable arbitrator could have come to.

ORDER

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1. The appeal is dismissed
2. No order as to costs.

JUDGMENT

RAKOW, J:

Introduction and background

[1] This matter concerns an appeal by the appellants against an arbitration award given by the second respondent, who is not opposing this appeal. The initial complaint to the Labour Commissioner arose from the dismissal of the appellants, who worked as operators, employed by the first respondent after they were found guilty on charges relating to bribery, bringing the company's name in disrepute and dishonesty.

The Grounds of Appeal and opposition to the Appeal

[2] On 1 July 2020 the appellants noted an appeal with the Labour Court against the aforesaid award issued by the Arbitrator on the following questions of law:

'3.1 Appellants were charged with, bribery, bringing the company name in disrepute, and dishonesty. The Arbitrator found that Appellants' dismissal was substantively fair, based on circumstantial evidence. The Arbitrator erred in law when she wrongly applied rules of evidence relating to circumstantial evidence in that:

a) The inference that the Arbitrator had drawn i.e. Appellants were guilty of the charges, was inconsistent with all the proven facts; and
b) The facts were such that they included other reasonable inferences that Appellants did not receive money from the members of the public on the pretext of securing employment for them.
c) The arbitrator erred in law in that she made findings of fact i.e. the Appellants brought the company's name in disrepute, were bribed by members of the public to secure employment for them with First Respondent, and were involved in dishonest conduct. The evidence presented to the Arbitrator would not lead to such a conclusion, a reasonable arbitrator in the same circumstances could not have come to a similar finding.
d) The Arbitrator erred in law by disregarding Appellants' evidence presented at the disciplinary and arbitration hearing. Instead of accepting the evidence as uncontested evidence of which the clear facts could have assisted the case of (applicants) appellants herein, in that Appellants did not accept money from third

parties, hence the Appellants should not have been found guilty of any misconduct.

e) The arbitrator erred in law by concluding that based on the evidence before her, First Respondent had a fair and a valid reason in dismissing Appellants. The evidence that was presented to the Arbitrator did not warrant the dismissal of Appellants. First Respondent's witnesses contradicted each other, were evasive, and were not credible witnesses. Their testimonies did not substantiate allegations reflected in the charges on which Appellants were found guilty, which led to Appellants' dismissal.

f) The arbitrator erred in law by finding that Respondent's actions were consistent, even though First Respondent failed to charge a certain Mr. Daniel Nakanyala who accompanied Appellants to the mall on the day of the alleged incident. By not charging Mr. Daniel Nakanyala, First Respondent's actions were inconsistent with its policies and procedures, therefore unfair. First Respondent's actions are in contravention of the provisions of section 33 of the Labour Act, which provides that there should be substantive fairness in dismissal of employees/ Appellants.

g) Based on a proper assessment of the totality of the facts placed before the Arbitrator, it is crystal clear that the Arbitrator erred in law by concluding that Appellants dismissal was fair. No reasonable arbitrator would have reached such a decision hence the award should be set aside in its totality.'

[3] The first respondent filed its grounds of opposition in terms of rule 17 and raised the issue that an appeal may only be noted in respect of questions of law in terms of section 89(1) of the Labour Act 11 of 2007. The allegation is that the notice of appeal attempts to place the grounds of appeal under the umbrella of 'questions of law' whilst they are rather questions of fact.

[4] The first respondent further indicated that the arbitrator made a correct finding in law based on the facts and evidence placed before her and accordingly reached a decision that any other reasonable decision-maker would have reached. Further, the assertions that the arbitrator 'wrongly applied the rules of evidence relating to circumstantial evidence' are misplaced, unsubstantiated, and vague.

Context

[5] The appellants were employed as operators by the first respondent and were dismissed after they were found guilty on charges of bribery, bringing the company's

name in disrepute and bribery. The evidence briefly, is that a certain Daniel indicated to two witnesses Mr. Kaufilwa and Mr. Jona that he could not assist them with work at the first respondent but that he will introduce them and a third person to the appellants who work at the first respondent and will take their Curriculum vitae (CV) for possible employment at the first respondent.

[6] It is the evidence of these two witnesses that the first appellant indicated to them that he would introduce them to a person in Human Resources who will take their CVs. This was the second appellant. Both these witnesses were then asked to pay an amount of N$2000 for a medical evaluation and the two witnesses ended up contributing towards the so-called medical evaluation of the third person also as he did not have any money to pay as requested. They handed the money over as requested by the first appellant to the second appellant on 3 March 2018. The witnesses did not hear anything from the appellants regarding the medical examination which was to take place on the Monday after the money was handed over, and at a later stage were informed that a medical examination requested by the company, is not for their costs but will be paid by the company by some other persons. They then contacted the appellants seeking their money back and the second appellant promised to return their money but he never did.

[7] The two witnesses were promised their money back but when nothing happened they involved the police. At the police station, they were informed by the appellants that they will repay their money but this did not happen. The first witness then took up the matter with one of the supervisors at the company and was later called to give evidence in a disciplinary hearing.

[8] The first appellant testified that he was called by a certain Daniel to transport him to the mall but could not as his vehicle was at the carwash. He then asked the second defendant to assist to take Daniel to the mall. They picked Daniel and a certain Kanime up and at the mall Daniel and Kanime met with the two witnesses, Ananias and Paulus. He and the second appellant remained in the vehicle and thereafter went home. He denied receiving money from anybody. He was called to return the money that was received and decided to go to the police station where he met Jonas and Ananias who indicated that they gave money to Kanime who promised them jobs whilst he was with the first appellant. He was threatened by the witnesses that they will make sure that he loses his job but he never received any

money and he did not indicate at the police station that he will return the money to them.

[9] The second appellant testified that he took a certain Daniel and Mr. Kanime to the mall at the request of the first appellant. At the mall, he remained in the vehicle with the first appellant and thereafter went home. He never received money from the witnesses and upon the suggestion of the first appellant, went to the police station to resolve the matter. He was subsequently charged by the first respondent and dismissed.

[10] The appellants also called Daniel, Mr. Nakayala. He testified that the one witness, Mr. Ananias wanted to meet Mr. Kanime who is a traditional doctor. He asked the first appellant for a lift for him and Mr. Kanime to the mall and it was arranged with the second appellant. They remained in the vehicle at the mall and all later returned home. He did not see any of the witnesses give money to the appellants.

The arbitrator's finding

[11] The arbitrator, after hearing the evidence and submissions by the parties proceeded to give an analysis of the evidence, facts, and arguments. She in essence looked at the following:

i. In terms of section 33, the employer bears the onus to prove that (a) the dismissal was effected for a valid and fair reason and (b) that the procedures for effecting a dismissal were followed. She referred to the common law doctrine of *audi alteram partem* where the employee has a right to present his or her side of the story fairly and transparently, including the right to have timeous notice of the charges, the right to cross-examine, representation, and so forth.

ii. She sets out the grounds according to the International Labour Organization through its conventions and recommendations on which an employer can dismiss an employee, being (a) Misconduct, (b) incapacity, and (c) operational requirements and proceeds to set out a definition for misconduct, saying that

it normally refers to the actions by employees which are in breach of some or other company rule or obligation which rests upon the employee.

[12] She then investigated the charges against the appellants as well as discussed the question of whether the decision to dismiss the applicants is one which no reasonable employer in the position of the employer would possibly regard as reasonable and fair. She concluded that in her opinion any employer in the position of the first respondent would conclude that its name had been brought into disrepute and that an employer is justified to dismiss employees who tarnish the name of their employer. She found that the evidence produced was produced in a fair and valid manner was followed.

[13] She further found that in terms of the common law it is the duty of the employee to act in good faith towards his or her employer and that such obligation refers to all acts of dishonesty. Further, in pretending to be a Human Resources Officer and accepting bribes from the public, and in using the company name, the appellants breached their duty to act in good faith. She further dealt with the evidence presented to her and found the testimony of the appellants as not true as she found that there was no way that the witnesses would just come and point at the appellants among all the staff of the first respondent, as the persons who asked them for money. She found the evidence of both the appellants as not credible and pointed out that if Daniel was the guilty person, why did the appellants not provide his number to the police when they were there. She also found that the first appellant did not receive any payment from the witnesses but he introduced the second defendant as a member from HR of the first respondent.

[14] In dealing with the appropriateness of the sanction, she pointed out that the sanction must be fair and an investigation into fairness necessitate her to look at (a) consistency (b) years of service (c) the disciplinary record (d) personal circumstances and (e) the gravity of the offence. She found that the offences committed by the appellants were of a serious nature and that the appellants' work record could not save them from punitive action. She concluded that on a balance of probabilities, the dismissal of the appellants was both procedural and substantively fair.

<u>Point in limine</u>

[15] The first respondent submitted that the appeal is not properly before the court as the appellants failed to lodge their notice of appeal in compliance with rule 17 of the Labour Court Rules as well as rule 23 of the Rules Relating to the Conduct of Conciliation and Arbitration before the Labour Commissioner published in Government Notice no 262 of 31 October 2008, which dictates that any appeal against an award of the Labour Commissioner must contain the grounds upon which the appeal is based.

[16] The first respondent argued that a ground of appeal in terms of rule 17(2) of the Labour Court rules and rule 23(2)*(d)* of the conciliation and arbitration rules connotes the fact that a ground of appeal should set out the basis or reason upon which the court should determine the question of law raised by the appellant. The grounds set out in the above notice of appeal are not grounds but conclusions drawn by the draftsperson. It is argued that the appellants state that the arbitrator erred in law 'when she wrongly applied rules of evidence relating to circumstantial evidence' but fails to substantiate such statement except for averring that her inferences drawn were unreasonable and that other reasonable inferences could have been drawn from the facts.

[17] The appellants further allege and conclude that the arbitrator erred in law by drawing incorrect references, disregarding other possible references that could be drawn, finding the appellants were guilty of bribery, bringing the company's name in disrepute and being guilty of dishonest conduct, and disregarding evidence presented during the disciplinary and arbitration hearings. The averments on their own do not tell anyone the reasons why, or the grounds on which, and thus on what basis these averments are founded.

[18] It is further raised that all the questions asked under the umbrella of 'questions of law' are all in fact questions of fact. The arbitrator's decision reached and the interpretation by the arbitrator of fact is not perverse and one that any reasonable arbitrator could have reached and as such cannot be construed to be one of fact.

The arguments

[19] For the appellants, it was argued that the failure by the first respondent to charge Mr. Daniel Nakanyala who accompanied the appellants, must be seen as inconsistent behaviour or treatment by the first respondent of the appellants. It was further argued that the findings of the arbitrator are inconsistent with the facts that were produced at the hearing and that other reasonable inferences can be drawn from the evidence presented. For the appellants, it was maintained that the grounds of appeal did make out a basis for an appeal on legal grounds and should be heard as such.

[20] On behalf of the first respondent, the arguments as set out under the point in limine above were reiterated. They further argued that the findings of fact made by the arbitrator are findings to which any reasonable arbitrator would come. These findings are supported by the evidence presented during the arbitration proceedings and as such, the function to either accept or reject the said evidence lies with the specific arbitrator. The allegation that the arbitrator's decision is based on an inconsistency and contradictions is unfound and remains unsubstantiated.

[21] It was maintained that the appellants' dismissals were based on reasonable grounds as they committed a serious breach which goes to the root of their contract of employment. The arbitrator in this instance considered and took into account the evidence and made a decision based on the weight and material nature thereof. The first respondent further asked for the appeal to be dismissed with costs as the appellants are frivolous and vexatious in the pursuit of this appeal.

The legal principles applicable

[22] When dealing with determining questions of law on appeal in labour matters, the court can do no better than to refer to the matter of *Janse Van Rensburg v Wilderness Air Namibia (Pty) Ltd)*[1] wherein the Supreme Court points out what is understood regarding appeals that are limited on a question of law alone. O'Reagan AJA said:

[1] *Janse Van Rensburg v Wilderness Air Namibia (Pty) Ltd* (SA 33/2013) [2016] NASC 3 (11 April 2016).

‘[46] Where an arbitrator’s decision relates to a determination as to whether something is fair, then the first question to be asked is whether the question raised is one that may lawfully admit of different results. It is sometimes said that 'fairness' is a value judgment upon which reasonable people may always disagree, but that assertion is an overstatement. In some cases, a determination of fairness is something upon which decision-makers may reasonably disagree but often it is not. Allowing an employee to be heard before disciplinary sanctions are imposed is a matter of fairness, but in nearly all cases where an employee is not afforded that right, the process will be unfair, and there will be no room for reasonable disagreement with that conclusion. An arbitration award that concludes that it was fair not to afford a hearing to an employee when the law would require such a hearing, will be subject to appeal to the Labour Court under s 89(1)(a) and liable to be overturned on the basis that it is wrong in law. On the other hand, what will constitute a fair hearing in any particular case may give rise to reasonable disagreement. The question will then be susceptible to appeal under s 89(1)(a) as to whether the approach adopted by the arbitrator is one that a reasonable arbitrator could have adopted.

[47] In summary, concerning a decision on a question of fairness, there will be times where what is fair in the circumstances is, as a matter of law, recognised to be a decision that affords reasonable disagreement, and then an appeal will only lie where the decision of the arbitrator could not reasonably have been reached. Where, however, the question of fairness is one where the law requires only one answer, but the arbitrator has erred in that respect, an appeal will lie against that decision, as it raises a question of law.

[48] Finally, when the arbitrator decides as to the proper formulation of a legal test or rule, and a party considers that decision to be wrong in law, then an appeal against that decision will constitute an appeal on a question of law, and the Labour Court must determine whether the decision of the arbitrator was correct or not.

[49] The advantage of the approach outlined above is that it seeks to accommodate the legislative goal of the expeditious and inexpensive resolution of employment disputes, without abandoning the constitutional principle of the rule of law that requires labour disputes to be determined in a manner that is not arbitrary or perverse. It limits the appellate jurisdiction of the Labour Court by restricting its jurisdiction in relation to appeals on fact and on those questions of fairness that admit of more than one lawful outcome to the question of whether the decision of the arbitrator is one that a reasonable arbitrator could have reached. Other appeals may be determined by the Labour Court based on correctness. In outline, then, this is the approach that should be adopted in determining the scope of appeals against arbitration awards in terms of s 89(1)(a).'

[23] The contention by the appellants that they or any superior authority would, on the same facts, have possibly reached a different finding, does not automatically justify an interference with the arbitrator's decision. In *Andima v Air Namibia (PTY) Limited and Another* [2] the court specifically dealt with the question as to when a finding is perverse, and it found that:

'that a finding is perverse if: (a) it is based on inadmissible or irrelevant evidence, (b) it fails to take into account all the relevant evidence, and (c) it is against the weight of the evidence in that it cannot be supported by the evidence on the record. Accordingly, the finding would not be perverse and appellate interference would not be justified just because, on the same facts, the superior tribunal could have come to a different conclusion.'

[24] The grounds of an appeal must further be so construed that they are 'good grounds' as that is the requirement for the type of ground that must be listed as a ground of appeal for such an appeal to succeed. In *Commercial Investments Corporation v Shalyolute and Another*[3] Parker AJ said the following regarding this requirement:

'It is to those grounds of appeal that I now direct the enquiry. I shall consider them one by one. Before I do so, I should for good reason rehearse here what I said in the recent case of *Angula v Stuttaford van Lines and Dionysius Louw N.O.* (HC-MD-LAB-APP-AAA-2018/00038) [2018] NALCCMD 31 (27 November 2018). There, I stated at para 3 that it is appellant who must satisfy the court that good grounds exist to uphold the appeal. Thus, the grounds of appeal must be reasons why the court should hold that the decision of the arbitrator is wrong, that is, reasons for the conclusions drawn by the drafter of the notice of appeal, not just the conclusions simpliciter (see also *Germanus v Dundee Precious Metals Tsumeb* (HC-MD-LAB-APP-AAA-2017/00009) [2018] NALCMD 28 (23 October 2018). *Germanus* applied the principle in *S v Gey van Pittius* and another 1990 NR 35 (HC). There, Strydom AJP considering the meaning and content of grounds of appeal, rejected the appellant's so-called grounds of appeal for not being grounds but conclusions drawn by the draftsman of the notice 'without setting out the reasons or grounds therefor'. (Italicized for emphasis)

[3] In that regard, it must be remembered that in appeals under the Labour Act, it is not the burden of the Labour Court to search the nooks and crannies of the Award to unearth

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[2] *Andima v Air Namibia (PTY) Limited and Another* (SA 40 of 2015) [2017] NASC 15 (12 May 2017).
[3] *Commercial Investments Corporation v Shalyolute and Another* (HC-MD-LAB-APP-AAA 41 of 2018) [2019] NALCMD 5 (07 February 2019).

every fault imaginable in the Award. The burden of the court is to consider the grounds of appeal to determine whether the appellant has satisfied the court that good grounds exist to uphold the appeal.

. . .

. . .

[6] In considering this ground, one must not lose sight of the trite and entrenched principles that –

(a) the function to decide acceptance or rejection of evidence falls primarily within the province of the arbitration tribunal, and the Labour Court will not interfere with the arbitrator's findings of credibility and factual findings where no irregularity or misdirection is proved or apparent on the record (see *S v Slinger* 1994 NR 9 (HC)); and

(b) where there is no misdirection on fact by the arbitrator, the presumption is that his or her conclusion is correct and that the Labour Court will only reverse a conclusion on fact if convinced that it is wrong. If the appellate court is merely in doubt as to the correctness of the conclusion, it must uphold the trier of fact (see *Nathinge v Hamukanda* (A 85/2013) [2014] NAHCMD 348 (24 November 2014)).

[7] The foregoing principles were applied in these recent cases: *Reuter and Another v Namibia Breweries* (HC-MD-LAB-APP-AAA-2018/00008) [2018] NAHCMD 20/2018 (8 August 2018); *Angula v Stuttaford van Lines and Dionysius Louw N.O*. (HC-MD-LAB-APP-AAA-2018/00038) [2018] NALCCMD 31 (27 November 2018); and *Germanus v Dundee Precious Metals Tsumeb* (HC-MD-LAB-APP-AAA-2017/00009) [2018] NALCMD 28 (23 October 2018). In the instant proceeding, appellant does not indicate to the court what irregularities or misdirections were proved; and I do not find any irregularities or misdirections that are apparent on the record. In sum, it has not been shown that there were misdirections on the facts by the arbitrator leading to conclusions that are wrong regarding matters under this ground. It follows inevitably that I am not entitled to interfere.'

[25] It was further argued on behalf of the appellants that the parity principle was not applied by the first respondent and as such renders the dismissal unfair. Regarding the requirement that the dismissal of employees must be both substantially and procedurally fair, Uietele J in *ABB Maintenance Services Namibia (Pty) Ltd v Moongela*[4] said the following:

[4] *ABB Maintenance Services Namibia (Pty) Ltd v Moongela* (LCA 11/2016) [2017] NAHCMD 18 (07 June 2017).

'Substantive fairness means that a fair and valid reason for the dismissal must exist. In other words, the reasons why the employer dismisses an employee must be good and well-grounded, they must not be based on some spurious or indefensible ground. This requirement entails that the employer must, on a balance of probabilities, prove that the employee was guilty of misconduct or that he or she contravened a rule. The rule the employee is dismissed for breaking must be valid and reasonable. Generally speaking, a workplace rule is regarded as valid if it falls within the employer's contractual powers and if the rule does not infringe the law or a collective agreement.

[22] The requirement of substantive fairness furthermore entails that the employer must prove that the employee was or could reasonably be expected to have been aware of the existence of the rule. This requirement is self-evident; it is clearly unfair to penalise a person for breaking a rule of which he or she has no knowledge. The labour court has stressed the principle of equality of treatment of employees-the so-called parity principle. Other things being equal, it is unfair to dismiss an employee for an offence which the employer has habitually or frequently condoned in the past (historical inconsistency), or to dismiss only some of several employees guilty of the same infraction (contemporaneous inconsistency).'[5]

Conclusions

[26] The grounds of appeal in the current matter can be divided into grounds dealing with the evidence presented, the so-called inconsistency of the facts, the reasonableness of the inferences drawn by the arbitrator, the conclusion the arbitrator arrived at regarding the fact that the company's name was brought in disrepute, the appellants received bribes and that the appellants were involved in dishonest conduct which is a conclusion that no reasonable arbitrator under the circumstances would come to and the fact that the arbitrator disregarded the appellants' evidence (grounds 1,2,3,4 and 5), on one end and an attack on the substantive and procedural fairness of the process that was followed on the other side (grounds 6). Ground 7 seems to be a repetition of perhaps a summary of the grounds raised under 1,2,3,4 and 5.

[27] With respect to grounds 1,2,3,4 and 5, the court finds that these grounds either do not amount to good grounds or are not grounds raised as grounds in law. They do not meet the standard that must be contained in a ground raised on appeal

[5] *SVR Mill Services (Pty) Ltd v Commission for Conciliation, Mediation & Arbitration & others* (2004) 25 ILJ 135 (LC).

in that they are a repetition of the conclusions drawn by the drafter and do not set out the reasons for these conclusions. This specifically relates to grounds 1 and 2. There are no additional reasons set out for arriving to the conclusion in these grounds and as such, they are not good grounds.

[28] The reference, in grounds 3;4, and 5, to errors made in the law by the arbitrator, does not meet the description of a ground in law as set out in *Wilderness safaris* and as the function to either accept or reject evidence falls primarily within the scope and functions assigned to the arbitrator in terms of the Labour Act, the Labour Court will not interfere with the arbitrator's findings of credibility and factual findings where no irregularity or misdirection apparent on the record as the presumption is that her conclusion is correct and therefore not a conclusion that no reasonable arbitrator would have reached. In fact, it is quite the opposite.

[29] The court can further not fault the conclusion arrived by the arbitrator regarding the parity principle as there was simply no evidence before the arbitrator that Mr. Daniel Nakanyala committed any offence for which he should have been charged. At most, the evidence from the employee's witnesses was that he said he could not help them but he will introduce them to someone else and the second defendant testified that Mr. Nakanyala introduced a certain Mr. Kanime to the employer’s witnesses who was a witch doctor. No other evidence showing that the employer has habitually or frequently condoned similar offenders in the past or to dismiss only some of a number of employees guilty of the same infraction. For that reason this ground should also be dismissed.

[30] The last ground deals with the assessment of the totality of the facts and attacks the conclusion that the arbitrator came to when she concluded the appellants’ dismissals were fair. Again, no reasons for this ground are provided and similarly to grounds 1,2,3,4 and 5, it seems like a conclusion reached by the drafter without setting out what is the basis to conclude that no reasonable arbitrator would have reached such a decision.

[30] Regarding costs, the court is not convinced that the appellants approached this court in a frivolous and/or vexatious manner and will therefore make no order as to costs.

The order

1. The appeal is dismissed.
2. No order as to costs.

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Rakow J

Judge

APPEARANCES

APPELLANT:	E Coetzee of Tjitemisa & Associates Windhoek
RESPONDENT:	R Rukoro of LorentzAngula Inc. Windhoek