

REPUBLIC OF NAMIBIA



LABOUR COURT OF NAMIBIA MAIN DIVISION, WINDHOEK

EX TEMPORE JUDGMENT

In the matter between:

Case no: HC-MD-LAB-APP-AAA-2021/00075

BUKALO VILLAGE COUNCIL

APPELLANT

and

THE LABOUR COMMISSIONER

FIRST RESPONDENT

FABIOLA KATJIVENA

SECOND RESPONDENT

MARTIN NYAMBE LIMBO

THIRD RESPONDENT

Neutral citation: *Bukalo Village Council v The Labour Commissioner* (HC-MD-LAB-APP-AAA-2021/00075) [2022] NALCMD 4 (28 January 2022)

Coram: GEIER J

Heard on: 28 January 2022

Delivered: 28 January 2022

Released: 14 February 2022

Flynote: Labour Court – Jurisdiction – Appeals – courts generally will be hesitant to intervene, especially at an early stage of proceedings still pending in a lower court, having regard to the effect of such procedure in the court below and to the fact that redress and remedies by means of review or appeal would ordinarily be available. Although generally superior courts have the power to intervene in cases pending in a lower court where a grave injustice may otherwise result or where justice might not by other means be obtained. *In casu* these requirements were not met and the court therefore declined to exercise its appeal jurisdiction and referred the matter back to be completed before the arbitrator.

Summary: The facts appear from the judgment.

ORDER

1. The Court declines to entertain the appeal.
2. The case is referred back to the Office of the Labour Commissioner for the arbitration to continue before the second respondent.
3. The matter is removed from the roll.

JUDGMENT

GEIER J:

[1] In the labour appeal that serves before the court this morning the question also arose whether or not the court should exercise its powers of appeal in circumstances where the proceedings before the arbitrator in the Office of the Labour Commissioner are not complete.

[2] The fact of the matter is that the arbitrator gave rulings on a number of in limine points raised on behalf of the appellant. More particularly the points relate to

the third respondent's non-compliance with the Limitations of Legal Proceedings Act 94 of 1970, a ruling in regard to whether or not the perceived relevant minister should be joined as a party to the proceedings, whether or not the arbitrator had jurisdiction to adjudicate on the third respondent's claim brought on the basis of a perceived legitimate expectation normally relief sought in review proceedings. The proceedings before the first respondent are due to proceed on the merits. The question thus arose whether or not the appeal in such circumstances should be entertained by the court or not and accordingly the parties were requested to address this issue.

[3] Mr Ncube on behalf of the appellant pointed out that the points raised in the appeal go to the root of the matter and that they would bring finality to the case and that the issue of jurisdiction was fundamental.

[4] The third respondent, for obvious reasons, had no issue with the matter continuing before the arbitrator.

[5] The court previously had occasion to deal with the issue of piecemeal appeals and the principles which apply to matters of this nature and which were addressed in the judgment of this court, in *Sefofane Air Charters (Pty) Ltd and Another, Van Rensburg v 2010 (2) NR 554 (LC)* where the court with reference to the leading authorities, analysed the applicable principles and from which it emerges that the courts will be hesitant to intervene - especially at an early stage of undetermined proceedings in the lower court - having regard to the effect of such procedures in the court below and with regard to the fact that redress and remedies by means of review or appeal would ordinarily be available in due course. Courts have generally also stated that superior courts have the power to intervene in such cases pending in the lower courts, where grave injustice may otherwise result or where justice might not - by other means - be obtained.¹

[6] The matter is very simple. It was at no stage submitted to this court – and I also cannot see any basis to for such assumption - that grave injustice would arise if this court would not intervene at this stage in the pending arbitration and more importantly it is not apparent from the facts serving before me, that justice might not

¹ Compare *Sefofane Air Charters (Pty) Ltd and Another, Van Rensburg* at [18] to [23].

by other means be obtained i.e by way of a review or appeal in the normal course, if required.

[7] In the result I decline to entertain this appeal at this stage and I refer the matter back to the Office of the Labour Commissioner to be arbitrated upon further.

H GEIER
Judge

APPEARANCES

APPELLANT:

J Ncube

Office of the Government Attorney,

Windhoek

3RD RESPONDENT:

In Person