



SUMMARY

REPORTABLE

CASE NO.: LCA 02/2010

IN THE HIGH COURT OF NAMIBIA

In the matter between:

SHOPRITE NAMIBIA (PTY) LTD v FAUSTINO MOISES PAULO AND OTHER

PARKER J

2011 March 7

Labour Law - Labour Act, 2007 (Act No. 11 of 2007), s. 89(1)(a) – Appeal in terms of – Court holding that appellant not entitled to rely on any ground of appeal apart from ‘any question of law alone’ – Court finding that the appellant’s notice of appeal contains grounds other than questions of law alone – Consequently Court holding that these is no proper appeal before it and so the Court dismissing the appeal.

Held, that the phrase ‘question of law alone’ means a question of law alone without anything else present, e.g. opinion or fact.

Held further, that a notice of appeal must specify the grounds of the appeal and the notice must be carefully framed for an appellant has no right in the hearing of an appeal to rely on any grounds not specified in the notice of appeal.

Held further, that specifying grounds of appeal is not a matter of form but a matter of substance necessary to enable appeals to be justly disposed of and *in casu* the matter of substance is, in a way, prescribed by the Labour Act.

CASE NO.: LCA 02/2010

IN THE LABOUR COURT OF NAMIBIA

In the matter between:

SHOPRITE NAMIBIA (PTY) LTD

Appellant

and

FAUSTINO MOISES PAULO

First Respondent

EMMA NIKANOR N.O.

Second Respondent

CORAM: PARKER J

Heard on: 2010 November 19

Delivered on: 2011 March 7

JUDGMENT

PARKER J: [1] This is an appeal instituted by the appellant, represented by Mr. Maasdorp, by an 'Amended Notice of Appeal from Arbitrator's (the second respondent's) Award' filed with this Court on 13 August 2010. And '[T]he questions of law appealed against in the arbitrator's award' are the following, according to the appellant:

- (1) The arbitrator erred on the law and/or on the facts in finding on the material before her that the instructions given by the appellant to the respondent were not clear.

- (2) The arbitrator erred on the law and/or on the facts in finding on the material before her that the charges levelled by the appellant against the respondent did not justify dismissal and that the appellant had no valid reason to dismiss the respondent.
- (3) The arbitrator erred on the law and/or on the facts in finding on the material before her that the transgressions forming the basis of charges 1-6 were all committed on 17 April 2009 and should have resulted in the appellant charging the respondent with the commission of a single offence.
- (4) The arbitrator erred on the law and/or on the facts in finding on the material before her that the appellant, in disciplining the respondent for misconduct committed prior to the respondent making an appointment with Mr. Malan to discuss his grievance, treated the respondent unfairly.
- (5) The arbitrator erred on the law and/or on the facts in finding on the material before her that the respondent was correct in refusing to share with the appellant the password to his computer and that the appellant was not serious in pursuing the matter.

[2] It is those items the appellant terms 'questions of law', set out by the appellant in the amended notice of appeal that drew the preliminary objection of the first respondent, represented by Mr. Namandje, that the appeal is not properly before this Court. The appellant, as submitted on its behalf by Mr. Maarsdorp, is aware that it is only entitled to appeal to this Court on 'a questions of law'. In terms of s. 89 (1) it is not just 'questions of law' *simpliciter*: it is 'question of law *alone*' – that is the language of the Labour Act, and the use of the word 'alone' by the lawmaker is significant, as I shall demonstrate shortly. Section 89, in material part, provides:

(1) A party to a dispute may appeal to the Labour Court against an arbitrator's award made in terms of section 86 –

(a) on any question of law *alone*; or ...'

[Italicized for emphasis]

[3] The predicative adjective 'alone' qualifying 'law' means 'without others present'. (*Concise Oxford Dictionary*, 10th edn) Accordingly, the interpretation and application of s. 89 (1) (a) lead indubitably to the conclusion that this Court is entitled to hear an appeal on a question of law alone if the matter, as in the instant case, does not fall under s. 89 (1) (b). A 'question of law alone' means a question of law alone without anything else present, e.g. opinion or fact. It is trite that a notice of appeal must specify the grounds of the appeal and the notice must be carefully framed, for an appellant has no right in the hearing of an appeal to rely on any grounds of appeal not specified in the notice of appeal. In this regard it has also been said that precision in specifying grounds of appeal is 'not a matter of form but a matter of substance ... necessary to enable appeals to be justly disposed of (*Johnson v Johnson* [1969] 1 W.L.R. 1044 at 1046 *per* Brandon J).' The *locus classicus* of a similar proposition of law by the Court is found in *S v Gey Van Pittius and Another* 1990 NR 35 at 36H where Strydom AJP (as he then was) stated, 'The purpose of grounds of appeal as required by the Rules is to apprise all interested parties as fully as possible of what is in issue and to bind the parties to those issues.' That case concerned a criminal appeal, but I see no good reason why the principle enunciated by the Court should not apply with equal force to appeals in terms of the Labour Act.

[4] What makes the grounds set out by the appellant absolutely objectionable is that the Labour Act, by which the appellant has approached this Court on appeal, entitles the appellant to appeal against the second respondent's award made in terms of s. 86 of the Labour Act on 'any question of law *alone*'. But the appellant has appealed, by its amended notice of appeal, not on questions of law alone, but 'on the law and/or on the facts'; not even after the appellant had amended its original notice of appeal, the grounds remained the same in material particular. The appellant is not entitled to rely on any ground of appeal apart from 'any question of law *alone*'. (See *Johnson v Johnson* supra;)

[5] The infraction that the appellant has committed 'is not a matter of form'; it is 'is a matter of substance (*Johnson v Johnson* supra);' and, *a fortiori*, a matter of substance in a way prescribed by the Labour Act. The appellant's contention, taken up in refrain by Mr. Maasdorp, that it has framed the amended notice of appeal in that way because it was appealing against the whole award and not just a part of it is with respect groundless. That contention does not even begin to get off the starting blocks: It cannot rescue the appellant from its predicament. According to s. 89 (1) (a), it is of no moment whether the appeal is against the whole or only a part of the award; the statutory prescription referred to previously is that a party which wishes to appeal is entitled to appeal on a question of law *alone*: nothing more; nothing else. It is with firm confidence that I uphold the respondent's preliminary object on the point under consideration.

[6] I do not think the conduct of the appellant has reached the bar of vexatiousness or frivolousness within the meaning of s. 118 of the Labour Act. That being the case, I shall not make any order as to costs in favour of any party.

[7] For the foregoing reasoning and conclusions, I hold that there is no proper appeal before the Court.

[8] Whereupon I make the following orders:

- (1) The appeal is dismissed.
- (2) There is no order as to costs.

PARKER J

COUNSEL ON BEHALF OF THE APPLICANT:

Adv R L Maasdorp

Instructed by:

GF Köpplinger Legal Practitioners

COUNSEL ON BEHALF OF THE FIRST RESPONDENT:

Mr S Namandje

Instructed by:

Sisa Namandje & Co. Inc.