



LABOUR COURT OF NAMIBIA MAIN DIVISION, WINDHOEK

JUDGMENT

Case no: LC 86/2013

In the matter between:

NATIONAL HOUSING ENTERPRISE

APPLICANT

and

EDWIN BEUKES

FIRST RESPONDENT

LAUPLEZWI SLUYSKEN SAMUPOFU

SECOND RESPONDENT

GODFRIED UAENDERE

THIRD RESPONDENT

AARON HAGE STEPHANUS

FOURTH RESPONDENT

HANS ISAAKS

FIFTH RESPONDENT

SIMON PHILEMON NUJOMA

SIXTH RESPONDENT

TJIJANDJEUA DIMETRIUS KAMUNDU

SEVENTH RESPONDENT

EVELINE UANIVI

EIGHTH RESPONDENT

LORETTE PHILANDER

NINTH RESPONDENT

GUSTAVE HANGANEE MUPURUA

TENTH RESPONDENT

CATHLEEN MULLER

ELEVENTH RESPONDENT

THE MAGISTRATE, DISTRICT LABOUR

COURT, WINDHOEK

TWELFTH RESPONDENT

Neutral citation: *National Housing Enterprise vs Beukes* (LC 86/2013) [2013]
NALCMD 22 (4 July 2013)

Coram: PARKER AJ

Heard: 7 June 2013

Delivered: 7 June 2013

Reasons: 4 July 2013

Flynote: Labour Law – Complaint lodged on 16 June 2011 with the magistrates’ court, Windhoek, in terms of the previous Act (the Labour Act 6 of 1992) – Court found that no district labour court exists in law after the coming into force on 1 November 2008 (‘effective date’) of the Labour Act 11 of 2007 to hear complaints lodged by employees and employers.

Summary: Labour Law – Complaint lodged on 16 June 2011 by respondents (former employees of the applicant employer) – Court held that the Labour Act 11 of 2007 abolished the district labour court system in our Labour Law as from the effective date (ie 1 November 2008) and only saved it for the benefit of pending matters in terms of item 15 of Schedule 1 to that Act – Court held further that no district labour court exists that can hear complaints of employees and employers in a matter that was not pending within the meaning of item 15 of Schedule 1 to the Labour Act 11 of 2007 – In the instant case, the court concluded that the clerk (or assistant registrar) of the magistrate court, Windhoek, should not have accepted the complaint lodged by the respondents; any learned Magistrate should not constitute a district labour court and clothe himself or herself with authority of chairperson of such district labour court in order to hear the matter – Consequently the court granted an order staying and suspending any proceedings in the matter enrolled on 16 June 2011 in the magistrates court so as to avert the perpetuation of a clear illegality by any learned magistrate who may be minded to metamorphose himself or herself into a chairperson of a district labour court and constitute a district labour court and entertain and hear the matter enrolled on 16 June 2011 in clear violation of the Labour Act 11 of 2007.

JUDGMENT

PARKER AJ:

[1] This is an application brought by the applicant on notice of motion in which the applicant prayed for the relief set out in the notice of motion. The first, fourth, tenth

and eleventh respondents moved to rejected the application, and filed a notice of intention to oppose the application. At the hearing of the matter on 7 June 2013 Mr Barnard represented the applicant, and Mr Rukoro the first, second, third, fourth, fifth, sixth, seventh, eighth, ninth, tenth and eleventh respondents ('the respondents'). Having heard counsel and having been satisfied that a case had been made out for the relief sought to the extent appearing in the order, I granted the application and made the following order:

1. The forms and service of process in terms of the rules of the Labour Court are dispensed with and the matter is heard as one of urgency.
2. All proceedings in the District Labour Court under case number DLC 134/2007 are stayed and must be suspended pending the finalization of the appeal lodged by the applicant against the judgment of the Labour Court, per Kauta AJ, on 27 February 2013 under case number LC 67/2012.
3. The respondents are interdicted and restrained from taking any further steps intended or having the effect of advancing or promoting the finalization of the proceedings under case number DLC 134/2007 prior to the finalization of the appeal lodged by the applicant against the judgment of the Labour Court, per Kauta AJ, on 27 February 2013 under case number LC 67/2012.
4. There is no order as to costs.'

These are my reasons.

[2] To start with, I give a brief survey of the history of the matter. The survey is necessary to open the way to the determination of the present application. Certain complainants who were then described simply as 'Edwin Beukes (the first respondent) & seven Others' brought a complaint of unfair dismissal and certain relief in terms of the previous Act (the Labour Act 6 of 1992) against the applicant in proceedings initiated in early 2007 before the defunct District Labour Court ('DLC'), Windhoek, under the previous Act. The DLC gave its judgment on 28 October 2008. The applicant appealed from that decision before the Labour Court. In a judgment delivered by the Labour Court on 13 May 2011, the court stated:

‘Having found that the proceedings before Ms Shaanika are to be set aside in their entirety including the judgments and orders which she made, it would not be open to me to then dismiss the complaint on the basis of the matter which was stated in those proceedings with reference formulation of the complaint and the relief sought in it. That would be a matter for the District Labour Court to consider in the context of an appropriate application or upon the evidence adduced in the complaint proceedings which should commence *de novo*. It would then be a matter for NHE to raise in that forum.’

[3] After the Labour Court judgment had been handed down on 13 May 2011 the magistrates’ court, Windhoek, respondents trudged to and enrolled the matter on 16 June 2011 for hearing in a district labour court from 7–18 November 2011 (see the judgment by Kauta AJ, para 4). On 29 June 2012 the applicant brought an application in the Labour Court in which the applicant sought an order to set aside the proceedings the respondents were pursuing in the magistrates’ court, Windhoek, as aforesaid, and to set aside the relief sought by the respondents in that court. In the alternative, the applicant sought an order, directing each of the respondents to provide security for the costs of the applicant that maybe incurred in the trial proceedings in the DLC under case number DLC 134/2007, in the sum of N\$350 000,00.

[4] The Labour Court (per Kauta AJ) heard the application on 29 June 2012 and delivered its judgment on 27 February 2013 in which the court dismissed the application. The applicant filed a notice of appeal against that Labour Court judgment (per Kauta AJ).

[5] In determining the present application it is extremely important – as a matter of law – at the threshold to interpret and apply item 15 of Schedule 1 to the Labour Act 11 of 2007 (‘the Labour Act’); for, the interpretation and application of item 15 holds the key to the proper determination of the present application. This is what the chairperson of the so-called ‘DLC’ (‘the chairperson’) should have considered for her to decide whether there was a district labour court in existence in relation to the complaint that was launched on 16 June 2011 over which she could preside in order to hear the matter that was enrolled on 16 June 2011, that is, close to three years after ‘the effective date’, the date on which the Labour Act came into operation.

[6] The Labour Act which came into operation on 1 November 2008 (except s 28 of that Act) repealed the previous Act (ie the Labour Act 6 of 1992), 'subject to the transitional provisions set out in the Schedule' (see s 142(1) of the Labour Act). The item which is relevant in this proceeding is item 15(1), and it reads 'In this item, "pending" means that a matter has been filed with the registrar of a district Labour Court, or the Labour Court, as the case may be, and has been issued a case number in terms of the laws governing the operation of the court'.

[7] In casu, the matter that was enrolled in the magistrates' court, Windhoek on 16 June 2011 was not by any stretch of legal imagination 'pending' within the meaning of item 15(1) of Schedule 1 to the Labour Act 11 of 2007. The reason is simple. The matter that was enrolled in the district labour court, Windhoek, in 2007 was heard by the chairperson of that district labour court, the learned Magistrate Shaanika, in 2007, and she gave her judgment on 28 October 2008, that is, some four days before the repeal of the previous Act by the Labour Act 11 of 2007. The Labour Act 11 of 2007 abolished the district labour court system in our Labour Law, and only saved it for the benefit of pending matters. Thus, no district labour court exists that can hear complaints of employees and employers in a matter that was not pending. It follows that when the learned Magistrate Shaanika's decision was set aside on appeal by the Labour Court (per Smuts J), nobody, including the respondents (ie the complainants) or a magistrate, could resuscitate it and give it life before a so-called district labour court because there was then simply no district labour court in existence anywhere in Namibia competent to hear that matter which was enrolled after the effective date. In sum, as far as the matter is concerned, there is no district labour court in existence that is competent to receive the complaint and adjudicate it. Counsel who appeared before the Labour Court (presided over by Kauta AJ) should have drawn Kauta AJ's attention to item 15 of Schedule 1 to the Labour Act 11 of 2007, for, the so-called district labour court that was to be presided over by a learned Magistrate after 1 November 2008 in that matter did not exist in our law.

[8] What all this means is this. The judgment of the Labour Court (per Smuts J) in the matter brought to a complete and unrevivable end, as far as the defunct district labour court system is concerned. And, as I have said more than once, there is no district labour court in existence in our law which can entertain any matter enrolled after 1 November 2008; for there is no such court before which a matter could be

enrolled. Thus, the clerk (or assistant registrar) of the magistrates' court, Windhoek, should not have accepted for enrollment the complaint lodged on 16 June 2011. And the applicant (in the present proceeding) could have simply ignored the so-called enrollment of the matter in the magistrates' court, Windhoek; but of course, it is convenient to have the court to declare the enrolment to be in violation of the Labour Act 11 of 2007.

[9] For the foregoing reasoning and conclusions, this court was entitled to hear the matter on urgent basis and to grant the relief sought so as to avert the perpetuation of a clear illegality by any learned magistrate who may be minded to metamorphose himself or herself into a chairperson of a district labour court and constitute a district labour court and entertain and hear the matter enrolled on 16 June 2011 in clear violation of the Labour Act 11 of 2007.

C Parker
Acting Judge

APPEARANCES

APPLICANT:

T Barnard
Instructed by Koep & Partners,
Windhoek

FIRST, SECOND, THIRD, FOURTH,
FIFTH, SIXTH, SEVENTH, EIGHTH, NINTH,
TENTH AND ELEVENTH RESPONDENTS:

S Rukoro
Instructed by Diedericks Inc.,
Windhoek

TWELFTH RESPONDENT:

No appearance