

CJ = Chief Justice
 DCJ = Deputy Chief Justice
 JA = Judge of Appeal
 AJA = Acting Judge of Appeal
 JP = Judge-President
 J = Judge of the High Court
 AJ = Acting Judge of the High Court

SUPREME COURT
1 MARCH 2017 - 13 APRIL 2017
B COURT

(See case summaries below)

SET DOWN DATE	ACRO NYM	CASE NO	YEAR	CASE NAME	COURT A QUO	JUDGE 1	JUDGE 2	JUDGE 3	JUDGE 4	JUDGE 5
1-Mar-17	SCR	2	2016	LIKANYI: OSBERT MWENYI vs THE STATE	HOFF, J	SHIVUTE CJ	DAMASEB DCJ	FRANK AJA		
3-Mar-17	SA	59	2016	PRESIDENT OF THE REPUBLIC OF NAMIBIA & 2 OTHERS vs ANHUI FOREIGN ECONOMIC CONSTRUCTION GROUP CORPORATION & ANOTHER	UEITELE, J	SHIVUTE CJ	MAINGA JA	SMUTS JA		
6-Mar-17	SA	14	2015	COUNCIL OF THE LAW SOCIETY vs LUTIBEZI: MUTIMANI VERNON	DAMASEB, JP et UEITELE, J	SMUTS JA	HOFF JA	FRANK AJA		
9-Mar-17	SA	7 & 8	2008 & 2009	GAINGOB: ZEDEKIAS & 2 OTHERS v THE STATE	MAINGA, J	SHIVUTE CJ	DAMASEB DCJ	SMUTS JA	HOFF JA	FRANK AJA
13-Mar-17	SA	23	2016	MERIT INVESTMENT ELEVEN (PTY) LTD vs NAMSOV FISHING ENTERPRISES (PTY) LTD	MILLER, AJ	DAMASEB DCJ	MAINGA JA	SMUTS JA		
15-Mar-17	SA	42	2015	GANEGB: SIMON PETRUS vs THE GOVERNMENT ATTORNEY & 2 OTHERS	PARKER, AJ	SHIVUTE CJ	MAINGA JA	SMUTS JA		

17-Mar-17	SA	33	2014	FELISBERTO: ALBERTO GOMES vs MEYER: JOHN ALAN	MILLER, AJ	MAINGA JA	HOFF JA	FRANK AJA		
22-Mar-17	SA	89	2014	VISSER: ALFRED MEW vs MINISTER OF FINANCE AND 3 OTHERS	SMUTS, J	DAMASEB DCJ	HOFF JA	FRANK AJA		
27-Mar-17	SA	16	2016	MOBILE TELECOMMUNICATIONS LIMITED vs ECKLEBEN: SIEGFRIED	UEITELE, J	DAMASEB DCJ	MAINGA JA	HOFF JA		
31-Mar-17	SA	24	2015	MENTOOR: CHAIRMAIN T vs USEBIU: NAIROBI LUKAS	GEIER, J	SHIVUTE CJ	MAINGA JA	SMUTS JA		
3-Apr-17	SA	27	2015	NELUMBU: MWADINOMHO MARTHA YA KRISTIAN & 7 OTHERS vs HIKUMWAH: GEORGE P.S & 2 OTHERS	GEIER, J	DAMASEB DCJ	SMUTS JA	HOFF JA		
6-Apr-17	SA	9	2015	BURGER EQUIPMENT & SPARES OKAHANDJA CC vs NEPOLO: ALOISIUS T/A DOUBLE POWER TECHNICAL SERVICES	PARKER, AJ	MAINGA JA	HOFF JA	FRANK AJA		
10-Apr-17	SA	9	2016	HELAO NAFIDI TOWN COUNCIL & ANOTHER vs KAMBONDE: ANKAMBO EMMANUEL & ANOTHER	CHEDA, J	DAMASEB DCJ	HOFF JA	FRANK AJA		
12-Apr-17	SA	44	2015	FREE NAMIBIA CATERERS CC vs CHAIRPERSON OF THE TENDER BOARD OF NAMIBIA AND 3 OTHERS	MILLER, AJ	SHIVUTE CJ	MAINGA JA	SMUTS JA		
13-Apr-17	SA	40	2015	ANDIMA: JOHANNES vs AIR NAMIBIA & ANOTHER	UNENGU, AJ	DAMASEB DCJ	MAINGA JA	FRANK AJA		

CASE INFORMATION:

SCR 2/2016- LIKANYI: OSBERT MWENYI v THE STATE

CASE SUMMARY

Issue

Whether the Supreme Court should 'review' (under s 16 of the Supreme Court Act 15 of 1990) its previous decision allowing the State's appeal against the judgment and order of the High Court which upheld the applicant's special plea of lack of jurisdiction brought in terms of s 106(1)(f) of the Criminal Procedure Act 51 of 1977 (the CPA).

Facts

The applicant formed part of accused persons who were arraigned in the High court on charges of, amongst others, High Treason, perpetrated during 1999 in the Caprivi region (now Zambezi region). He, together with other applicants, brought an application on 27 October 2003 in terms of s 106(1)(f) of the CPA pleading that the High Court had no jurisdiction to try the offence as he was unlawfully brought within the jurisdiction of the courts of Namibia. The plea was upheld by the High Court in *S v Mushwena and others* 2004 NR 35 (HC) but was dismissed by majority judgment on appeal in *S v Mushwena and others* 2004 NR 27 (SC) (*S v Mushwena*) and the matter referred back to the High Court for trial. The applicant was afterwards convicted by the court *a quo* of High Treason, nine counts of murder and 91 counts of attempted murder in the matter of *State v Malumo* (CC 32/2001) [2015] NAHCMD 213 (7-14 September 2015) ('Treason case') and sentenced on 8 December 2015 to an effective term of 15 years imprisonment.

The applicant instituted a review application in the Supreme Court relying on s 16 of the Supreme Court Act requesting the Supreme Court to review its decision in *S v Mushwena* as far as it relates to the applicant, especially in light of the recently decided case of *S v Munuma and 6 others* Case No. SA 37/2015 delivered on 22 August 2016 in which a special plea of lack of jurisdiction was upheld by this court on appeal in respect of a person the appellant alleges was brought within the jurisdiction of the courts of Namibia in circumstances similar to his.

The applicant asks that his conviction and sentence to be set aside on the ground that the Namibian authorities performed a sovereign act on Botswana territory in arresting and removing him from Botswana and placing him within the jurisdiction of the Courts of Namibia. The applicant seeks a permanent stay of prosecution in respect of the offences preferred against him on the indictment that he pleaded to in the court *a quo*.

Judgments sought to be reviewed:

S v Mushwena and others 2004 NR 27 (SC)

S v Mushwena and others 2004 NR 35 (HC)

Parties' Counsel:

Applicant

Mr. Greyson Nyoni (On instructions of Directorate of Legal Aid)

Respondent(s)

Mr. MN Wamambo (Office of the Prosecutor General)

Coram:

Shivute CJ, Damaseb DCJ and Frank AJA

Hearing start date

1 March 2017 at 10h00

Location

B-Court

CASE INFORMATION

SA 59/2016: PRESIDENT OF THE REPUBLIC OF NAMIBIA & 2 OTHERS vs ANHUI FOREIGN ECONOMIC CONSTRUCTION GROUP CORPORATION LTD (AFECC) & ANOTHER

CASE SUMMARY

Issue

1. Whether the Minister of Works and Transport's instruction to Namibia Airports Company to cancel a tender and to discontinue a project to upgrade and expand the Hosea Kutako International Airport (the airport) was lawful and within his powers?
2. Whether the tender award had been validly made?

Facts

The first respondent submitted a tender for the upgrading and expansion of the airport on 27 of June 2014, which was the closing date set for the submission of the expression of interest.

During the course of December 2015 and early January 2016, news reports were published in various Namibian newspapers making reference to: alleged non-compliance with statutory prescripts on the part of Namibia Airports Company (NAC); non-approval of the contract by the Attorney- General; potential bribery and corruption running into hundreds of millions of dollars on the part of the AFECC; and more competitive bids being ignored.

Following these allegations in the press with regards to the allocation of the tender, the President of the Republic of Namibia issued a media release stating that the tender award for the project has been terminated, following deliberations of the responsible Cabinet Committee in the light of complaints being received from legal practitioners about alleged absence of transparency in the process.

As a result of the Cabinet Committee's report, the President made a determination to instruct the Minister to act under section 9 (b) of the Airport's Company Act 25 of 1998 and to direct the NAC to discontinue all activities relating to the project so that the tender process can begin afresh under the auspices of the Ministry of Works and Transport under the Public Procurement Act 15 of 2015.

The High Court held that the Minister failed to exercise his own discretion to intervene in decisions of NAC and abdicated his decision-making power to the President. The court a quo held that a discretionary power vested in one official or body may not be usurped or exercised by another, whether the former is subordinate to the latter or not, and held that the Minister did not act within the confines of his authority under the empowering legislation.

The appeal is noted against the whole judgment of the High Court.

Judgment appealed against

Anhui Foreign Economic Construction (Group) Corporation LTD v The Minister of Works and Transport (A 21/2016) [2016] NAHCMD 265 (9 September 2016)

Parties' Counsel:

Appellants: Government Attorney

Respondents: Tjombe – Elago Law Firm Inc.

Coram:

SHIVUTE CJ, MAINGA JA, SMUTS JA

Hearing start date

3 March 2017 at 10h00

Location

B-Court

CASE INFORMATION:

SA 14/2015: THE COUNCIL OF THE LAW SOCIETY OF NAMIBIA V MUTIMANI VERNON LUTIBEZI

CASE SUMMARY

Issue

Whether the High Court was correct in finding that the respondent is a fit and proper person to be admitted as a legal practitioner after having been found guilty of plagiarism whilst being a student at the Justice Training Center (JTC).

Facts

In August 2013, the Law Society of Namibia was informed by the Board of Legal Education that a number of students at the JTC had been found guilty of copying and plagiarizing their academic work. The respondent was one such student and admitted to wrongdoing but filed an affidavit expressing contrition.

The respondent applied to be admitted as a legal practitioner. The Law Society of Namibia opposed his application on the grounds that the respondent was one of the students found guilty of copying and plagiarizing their academic work, and had not dealt with the issue satisfactorily in his application when called upon to do so and that the respondent is not a fit and proper person to be admitted as a legal practitioner. The High Court rejected the Law Society's objection and admitted the respondent. The appeal is against that order of the High Court.

Judgment being appealed against:

Mutimani Vernon Lutibezi v Law Society of Namibia (A 15/2015) NALCMD (27 March 2015)

Parties' Counsel

Appellants: Tjombe-Elago Law Firm Inc

Respondent: Frans Kwala of Kwala & Company Inc.

Coram

Smuts, JA, Hoff, JA, Frank, AJA

Hearing date

6 March 2017 at 10h00

Location

B- Court

CASE INFORMATION:

SA 7 & 8/2008 & 2009: GAINGOB: ZEDEKIAS & 2 OTHERS V THE STATE

CASE SUMMARY

Issue

The issue for determination is whether it is constitutional for the High Court to impose sentences which would exceed the ordinary life expectancy of an accused.

Facts

The appellants were convicted and each sentenced on two counts of murder (count 1 and 2), one count of housebreaking with intent to rob and robbery with aggravating circumstances (count 3) and two counts of housebreaking with intent to steal and theft (count 4 and 5) and theft (count 6) in the High court on 8 February 2002. First and second appellants were sentenced to 30 years on count 1 and 2; 12 years on count 3 and third appellant to 10 years; first and second appellant to 8 years, 4 years to run concurrently with the current sentences being served and third appellant to 5 years, 2 years of which to run concurrently with the 10 years on count 3. On count 5, all appellants were sentenced to 4 years to run concurrently with the sentences on count 4. First appellant was aged 36 years at the time of sentence and received an effective 67 years which would make him 103 years old provided the whole sentence is served. Second appellant was 25 years old and received an effective term of 67 years which means that he will be 92 after sentence is served. Third appellant was 35 years and received an effective term of 64 years which means that he will be 99 years by the time the sentence is served. The appellants applied in the High Court for leave to appeal against both conviction and sentence. That was refused and they petitioned the Chief Justice.

The appellants' petition to the Chief Justice was allowed on sentence alone. The appeal raises the question whether the sentences imposed offend Art 8 of the Constitution which prohibits cruel and inhumane treatment. The matter was in court on the 11 April 2016 and was postponed for the intervention of the Attorney-General.

Judgment being appealed against:

The State v Zedikias Gaingob and 3 other (CC 13/2001), High Court Judgment delivered 22 February 2002.

Parties' Counsel:

Applicant:

Directorate of Legal Aid

Respondent(s):

The Attorney-General

The Prosecutor-General

Coram:

Shivute CJ, Damaseb DCJ, Smuts JA, Hoff JA and Frank AJA

Hearing start date

9 March 2017 at 10h00

Location

B-Court

CASE INFORMATION:

SA 23/2016: MERIT INVESTMENTS ELEVEN (Pty) vs NAMSOV FISHING ENTERPRISES (Pty) Ltd

CASE SUMMARY

Issue

Whether a party can oppose an application to make an arbitration award an order of court on the basis that the obligations arising from a commercial agreement were not fully exhausted by the award and that the arbitration award did not, as a result, dispose of all obligations between the parties under the agreement.

Facts

Namsov Fishing Enterprises (Pty) Ltd (the respondent) and Merit Investments Eleven (Pty) Ltd (appellant), entered into an agreement in terms whereof the parties agreed that should a dispute arise between the parties, an alternative dispute resolution mechanism procedure was to be adopted, namely arbitration. A disagreement pertaining to payments for fishing quota exploitation rights arose between the parties. The arbitrator appointed to adjudicate in the dispute between the parties made an award in favour of the respondent who then applied to the High Court that the award be made an order of court in terms of section 31 of the Arbitration Act 42 of 1965. The application was opposed on the basis that the award did not dispose of all obligations between the parties under the commercial agreement. The High Court rejected this defense, holding that it was not a valid defence to resist the application to make the award an order of court; and directing the appellant to pay the award.

It is against this judgment that the appellant appeals.

Judgment appealed against:

NAMSOV FISHING ENTERPRISES (Pty) Ltd v MERIT INVESTMENT ELEVEN (Pty) Ltd
(I 3472/2013) [2016] NAHCMD 120 (21 April 2016)

Parties' Counsel:

Appellant: Theunissen, Louw and Partners

Respondent: Francois Erasmus & Partners, instructed by Jan Olivier & Co

Coram

Damaseb DCJ, Mainga JA, Smuts JA

Hearing start date

13 March 2017 at 10h00

Location

B-Court

CASE INFORMATION:

SA 42/2015: !GANEB: SIMON PETRUS v THE GOVERNMENT ATTORNEY & 2 OTHERS

CASE SUMMARY

Issue

Whether the appellant's conduct had been vexatious towards the Government of the Republic of Namibia or any of its institutions as to justify an order preventing him from seeking legal redress without leave of court.

Facts

At the root of this appeal is an order of the High Court granted on 29 July 2015. The High Court ordered that no civil proceedings may be instituted by the appellant and third respondent (in this appeal) against any person or the Government of the Republic of Namibia or any of its institutions in any court or inferior court without the prior leave of a judge in Chambers or that inferior court (sic). The impugned order, among others, ordered that such leave shall not be granted unless a judge or inferior court in question, as the case may be, is satisfied that the proceedings are not an abuse of the process of the court and that there is a prima facie ground for such proceeding. The order is to run indefinitely subject to variation or rescission on good cause.

The appeal is directed against the whole order of the High Court.

Order being appealed against:

Ex-tempore judgment and order by Parker, AJ on 29 July 2015.

Parties' Counsel:

Appellant:

Tjombe-Elago Inc, Windhoek

1st and 2nd Respondents:

Government Attorney

Coram:

Shivute CJ, Mainga JA and Smuts JA

Hearing start date

15 March 2017 at 10h00

Location

B-Court

CASE INFORMATION:

SA 33/2014: FELISBERTO: ALBERTO GOMES vs MEYER: JOHN ALAN

CASE SUMMARY

Issue

Whether the High Court misdirected itself / erred in law in ruling that the respondent successfully sustained a claim based on malicious prosecution by the appellant.

Facts

The respondent succeeded with an action for damages in the amount of N\$29 000 in the *court a quo*. The action was based on malicious prosecution. The appellant and respondent entered into a lease agreement for the appellant to carry out his professional welding business on property belonging to the respondent's business. The appellant however fell in arrear with the rental and was denied access to the premises and property belonging to appellant. He laid a criminal complaint resulting in the respondent being arrested and prosecuted.

The court *a quo* awarded damages based on the claim for malicious prosecution because of the criminal case of theft laid against the respondent, followed by his arrest and subsequent release on bail. Although the charge against the respondent was withdrawn, the court was satisfied that since the appellant associated himself with the prosecution, he was in law liable in damages.

The appeal lies against the whole judgment and order of the High Court.

Judgment being appealed against:

Meyer v Felisberto (I 2705/2012) [2014] NAHCMD 85 (14 March 2014)

Parties' Counsel:

Appellant:

Kwala and Co Inc, Windhoek

Respondent(s):

Etzold – Duvenhage Attorneys

Coram:

MAINGA JA, Hoff JA and Frank AJA

Hearing start date

17 April 2017 at 10h00

Location

B-Court

CASE INFORMATION:

SA 89/2014: VISSER: ALFRED MEW v MINISTER OF FINANCE AND 3 OTHERS

CASE SUMMARY

Issue

Whether the Minister of Finance's power to impose limitations on the liability of the MVA Fund ('the Fund') in different categories of loss in terms of s 10(2) of the Motor Vehicle Accidents Fund Act 4 of 2001 and the regulations promulgated under that section, is unconstitutional.

Facts

The appellant sustained serious injuries in a motor vehicle accident in 2004 which caused him his sight. The appellant's claim against the MVA Fund was limited in the amounts as set out in the regulations promulgated by the Minister of Finance under s 10(2) of the Motor Vehicle Accident Fund Act 4 of 2001. The appellant claimed in the court *a quo* that those limitations are unconstitutional and invalid on the grounds that Parliament unconstitutionally delegated law-making powers to the Minister in s 10(2) and, secondly, that the provision offends Art 10 guaranteeing equality before the law and freedom from discrimination. The High Court dismissed the constitutional challenge against s 10(2) of the Motor Vehicle Accident Fund Act with, costs.

The appeal lies against the whole judgment of the High Court.

Judgment being appealed against:

Visser v The Minister of Finance (I 3178/2007) [2014] NAHCMD 321 (29 October 2014)

Parties' Counsel:

Appellant:

Francois Erasmus & Partners

Respondent(s):

Government Attorney

Coram:

Damaseb DCJ, HOFF JA and Frank AJA

Hearing start date

22 March 2017 at 10h00

Location

B-Court

CASE INFORMATION:

SA 16/2016: MOBILE TELECOMMUNICATION LIMITED V SIEGFRIED ECKLEBEN

CASE SUMMARY

Issues

1. Whether the leased property is ascertained or ascertainable?
2. Whether the plaintiff repudiated the lease agreement?
3. Whether the prevailing circumstances at the conclusion of the lease agreement made performance impossible?

Facts

In the court a quo, the respondent as plaintiff issued summons claiming payment in the sum of N\$326 644,73 from the appellant as a result of an alleged breach of an agreement. The appellant defended the action and pleaded that the agreement relied upon by the plaintiff is not valid. In the alternative, the appellant pleaded that the respondent repudiated the agreement. At the end of the trial, the court granted judgment in favour of the respondent in the claimed amount plus interest at the rate of 20% per annum. The appellant was also ordered to pay the plaintiff's costs of suit.

Aggrieved by this decision, the appellant now seeks to overturn the decision of the High Court.

Judgment being appealed against:

Eckleben v Mobile Telecommunication Limited (I 920/2012) [2016] NAHCMD 46 (09 March 2016)

Parties' Counsel:

Appellant:

ENSAfrica Namibia

Respondents:

Andreas Vaatz & Partners

Coram:

Damaseb DCJ, Mainga JA and Hoff JA

Hearing start date

27 March 2017 at 10h00

Location

B-Court

CASE INFORMATION:

SA 24/2015: CHARMAIN THERESIA MENTOOR v NAIROBI LUKAS USEBIU

CASE SUMMARY

Issue

Whether or not the appellant has a valid defence to an impending eviction from Erf no. 2663 (A portion of Erf 114) Goreangab, Republic of Namibia.

Facts

On 5 August 2014 the appellant was served with a summons issued out of the Magistrates' Court evicting her from Erf no. 2663 (A portion of Erf 114) Goreangab, Republic of Namibia, held by title deed by the respondent, which property the respondent purchased on public auction. On 12 August 2014 the respondent obtained a warrant of ejectment against the appellant. The appellant opted to defend the matter on the basis that she was placed under administration in terms of sec 74C(1)(b)(i) of Act 32 of 1944, alleging the sale by public auction to be invalid. In an application for summary judgment the court found in favour of the respondent. Appellant filed an appeal to the High Court, where it was struck from the roll due to non-adherence with court timelines to file heads of argument. The court *a quo* refused to condone the non-compliance.

Judgment being appealed against:

Ex-tempore judgment and order striking the appeal from the roll on 18 May 2015.

Parties' Counsel:

Appellant – S.R. Philander of LorentzAngula Inc. C/O Legal Aid

Respondent – N. Ntinda of Sisa Namandje Inc.

Coram: Shivute CJ, Mainga JA and Smuts JA

Hearing start date

31 March 2017 at 10h00.

Location

B-Court

CASE INFORMATION:

**SA 27/2015: NELUMBU: MWADINOMHO MARTHA YA KRISTIAN & 7 OTHERS v
HIKUMWAH: GEORGE P.S. & 2 OTHERS**

CASE SUMMARY

Issue

Whether the appellant's decision to suspend and subsequently dismiss the respondents was a reviewable administrative decision.

Facts

The queen of the Oukwanyama community, duly recognised as a traditional leader under s 6 of the Traditional Authorities Act 25 of 2000, first suspended and then dismissed three headmen for alleged misconduct, purporting to act in terms of s 10(2) of the Traditional Authorities Act 25 of 2000. When her decisions were taken on review, the queen maintained that she acted in terms of her non-reviewable Royal prerogative which is not an administrative decision. The High court concluded that the impugned decisions were administrative in nature, rendering them liable to review in terms of Article 18 of the Namibian Constitution. The decisions were set aside and the headmen reinstated with their benefits.

The appeal lies against that decision of the High Court.

Judgment being appealed against:

Hikumwah and others v Nelumbu and others 2015 (4) NR 955 (HC)

Parties' Counsel:

Appellants:

Kwala & Co Inc, Windhoek

Respondent(s)

Government Attorney

Coram:

Damaseb DCJ, SMUTS JA and Hoff JA

Hearing start date

3 April 2017 at 10h00

Location

B-Court

CASE INFORMATION:

**SA 9/2015: BURGERS EQUIPMENT AND SPARES OKAHANDJA CC vs NEPOLO
ALOISIUS T/A DOUBLE POWER TECHNICAL SERVICES**

CASE SUMMARY

Issue

Whether the High Court misdirected itself in fact and in law by sustaining a claim based on misrepresentation.

Facts

Respondent entered into a contract of sale of a backhoe loader. The appellant represented to the respondent that the made-in-China loader was brand new, of high quality and robust. The High Court found that the loader had a latent defect and was unmerchantable and further that representations made to the respondent about the loader being brand new, of high quality and durable were misrepresentations that were material because they went to the root of the contract. The High Court held that the respondent was entitled to cancel the contract and granted N\$390 666 to the respondent as damages with interest in respect of claim 1 (breach of contract); and in respect of claim 2 damages in the amount of N\$25 133 with interest.

The appeal is against the whole judgment and order of the High Court.

Judgment being appealed against:

Nepolov Burgers Equipment and Spares Okahandja CC (I 2352/2012) [2015]
NAHCMD 53 (12 March 2015)

Parties' Counsel:

Appellant:

Du Pisani Legal Practitioners

Respondent(s):

Sisa Namandje & Co Inc.

Coram:

Mainga JA, Hoff JA and Frank AJA

Hearing start date

6 April 2017 at 10h00

Location

B-Court

CASE INFORMATION:

SA 9/2016: HELAO NAFIDI TOWN COUNCIL & ANOTHER v KAMBONDE: ANKAMBO EMMANUEL & ANOTHER

CASE SUMMARY

Issue

Whether the High Court misdirected itself in holding that the appellant, a Municipal Council is, jointly with another, liable for the removal of structures on a private dwelling by another private person (2nd respondent).

Facts

The respondent and another private person (2nd respondent) are 'co-owners' of a piece of land under the jurisdiction of the appellant. The property ought to have been subdivided for purposes of rates and taxes. Second respondent, however, erected a structure protruding on to the portion of the land occupied by first respondent. First respondent succeeded with his application to compel the second respondent to remove his structures despite a subsequent Council resolution disavowing any liability and obligation to do so. The court *a quo* held that the appellant, as it had initially accepted responsibility and, in any event, had a legal obligation to ensure peaceful co-existence between both respondents, was obliged to ensure that the structure complained of is removed.

The appellant appeals against the whole judgment.

Judgment being appealed against:

Ankambo Emmanuel Kambonde v Helao Nafidi Town Council (A 28/2014) [2016]
NAHCNLD 07 (12 February 2016).

Parties' Counsel:

Appellant:

Kishi Shakumu & Co. Inc

Respondent(s):

Inonge Mainga Attorneys

Coram:

Damaseb DCJ, Hoff JA and Frank AJA

Hearing start date

10 April 2017 at 10h00

Location

B-Court

CASE INFORMATION:

SA 44/2015: FREE NAMIBIA CATERERS CC V CHAIRPERSON OF THE TENDER BOARD OF NAMIBIA & 3 OTHERS

CASE SUMMARY

Issue

Whether the High Court erred in finding that the tender awarded to the appellant is only for the remainder of the original tender period, that is, until end March of 2014.

Facts

This appeal concerns a tender to provide catering services to public school hostels across the country. The tender was earmarked for a period of five years, which was to start on 1 April 2009 and end on 31 March 2014. The appellant together with other interested companies submitted their respective bids and ultimately the tender was awarded to the appellant. Subsequent to the award, a dispute arose between the parties regarding the terms of the contract. The appellant contends that the contract is to run until 2019, whereas the respondents maintain that the contract was to last until end March of 2014. The High Court found in favour of the respondents.

The appellant seeks to upset the decision of the High Court.

Judgment being appealed against:

Free Namibia Caterers v The Chairman of the Tender Board of Namibia (A 52/2014)
[2015] NAHCMD 196 (21 August 2015)

Parties' Counsel:

Appellant:

AngulaCo Inc, Windhoek

Respondents:

Government Attorney

Coram:

Shivute CJ, Mainga JA and Smuts JA

Hearing start date

12 April 2017 at 10h00

Location

B-Court

CASE INFORMATION:

SA 40/2015: ANDIMA: JOHANNES v AIR NAMIBIA & ANOTHER

CASE SUMMARY

Issue

Whether the High Court misdirected itself in upsetting the Arbitrator's finding of unfair dismissal.

Facts

The appellant was an employee of the first respondent until his dismissal after being found guilty of three counts of misconduct in a disciplinary hearing. After a referral of the dispute of unfair dismissal to the Office of the Labour Commissioner, the Arbitrator in the arbitration proceedings made an award in favour of first respondent and ordered reinstatement and back pay of lost salary. The first respondent appealed to the High Court against the arbitrator's award in terms of s 89(1)a of the Labour Act 11 of 2007, and on appeal the court held that no reasonable court could have made the finding the arbitrator made on the evidence of the matter and upheld the appeal and set aside the award.

The appeal is against the whole judgment of the High Court.

Judgment being appealed against:

Air Namibia Limited v Andima (LCA 84/2013) [2014] NALCMD 37 (26 September 2014)

Parties' Counsel:

Appellant:

Van Der Merwe-Greeff Andima Inc, Windhoek

Respondent(s):

Murorua & Associates

Coram:

Damaseb DCJ, Mainga JA and Frank AJA

Hearing start date

13 April 2017 at 10h00

Location

B-Court