



CASE NO: A 248/11

IN THE HIGH COURT OF NAMIBIA

In the matter of:

BELETE WORKU APPLICANT

and

SERVISAIR/EQUITY AVIATION (PTY) LTD
AND 23 OTHERS RESPONDENTS

CORAM: MILLER, AJ

Heard on: 30 September 2011

Delivered on: 30 September 2011 (*Ex Tempore*)

MILLER, AJ

JUDGMENT: [1] This matter, is to the best of my knowledge, without parallel in contemporary legal history and for several reasons.

[2] The Applicant approached the Court for final relief on a couple of hours notice to the Respondents.

[3] The relief claimed is sweeping in its nature and the Respondents include amongst others the present Chief Justice, the present Judge President, several judges of the Supreme Court, the Ombudsman, several Magistrates and several legal practitioners. The relief it claims as against the 1st to the 7th Respondents is for a final order interdicting the Respondents from selling or liquidating or closing the 1st Respondent, who I may add is the former employer of the Applicant.

[4] Furthermore, relief is claimed as a final interdict against the Deputy Sheriff to execute presumably a writ of execution issued in pursuance of a certain judgment debt which the Applicant claims he has against the 1st Respondent.

[5] As against all respondents, the Applicant seeks monetary awards in damages. These include as I have indicated several members of the judiciary, the legal profession and the Ombudsman.

[6] In essence, that claim for damages is alleged to be based on defamation, libel, insults, humiliation, castigating, character assassination, racism, racial discrimination and contempt of court at the instance of the respondents.

[7] Remarkably, I am asked by the Applicant to relieve the 1st to the 24th Respondents who are the several judges, the ombudsman and the legal practitioners of their licenses.

[8] By that I take it that the Applicant intends an order that I should relieve those officials of their functions.

[9] If I were to grant that it would mean that as from today, there will be no Chief Justice, no Supreme Court judge, there will be no judge president, there will be no Ombudsman and the legal profession will be less a few of its members.

[10] The Application is beset by several procedural and other difficulties. I am going to refer only to some of them and the list is not exhaustive.

[11] Firstly, the Applicant approached this Court in terms of the Provisions of Rule 6(12)(b) without complying with the ordinary Rules of Court relating to the filing and service of applications.

[12] Whereas that is permitted by Rule 6(12)(b) there are certain requirements with which I will deal in due course.

[13] Secondly, as far as the members of the judiciary are concerned, there has been no compliance with the relevant provisions of the High Court Act and the Supreme Court Act relating to the institution of legal proceedings against members of the judiciary.

[14] The claims for relief that I revoke the “licences” of the judiciary, is relief that I simply cannot grant.

[15] The power to relieve a judge of his duties rests solely with the President who acts upon the recommendation of the Judicial Service Commission.

[16] The Applicant is apparently familiar with the provisions of the Namibian Constitution, but clearly overlooked the clear provisions of Article 84 which relates to removal from office of members of the Judiciary.

[17] The claims sounding in money and those are claims for substantial amounts of damages against all the Respondents are not supported by any facts.

[18] Various allegations in sweeping terms are made against the individual respondents without any supporting facts which will support the bare allegation.

[19] I have indicated that Rule 6(12)(b), although available to an applicant who seeks urgent relief, has certain requirements which such an applicant must comply with in

order to have his matter heard as one of urgency.

[20] In essence it is required of the applicant to fully state the reasons why the matter is urgent and why he cannot obtain redress by instituting proceedings in the ordinary course. I directed at the outset of the hearing that this matter be argued as a separate issue. I pause to mention that Mr Heathcote at the outset of the proceedings requested that I refer the Applicant to a psychiatric institution for observation which application I declined and I need say no more about that.

[21] The Applicant's claim for urgency indeed rests on shaky grounds, both in fact and in law.

[22] There is no evidence to speak of, that the 1st Respondent is in the process of being sold or closed down, I presume in the sense that it is being placed either in voluntary or compulsory liquidation.

[23] The only reference to this is an averment by the Applicant that he has it on reliable authority that the 1st Respondent is being closed as from today or being sold.

[24] I do not know who the informant is, how reliable his information is and an affidavit by the informant would have done a great deal to enlighten me in that regard. Apart from the factual basis, the fact that the 1st Respondent is in the process of being sold or closed, as the Applicant puts it, does not render the matter urgent.

[25] If the 1st Respondent, which is a company, is being sold to a different entity, obviously it is sold with its debts and the Applicant's claim will not be extinguished by the mere that the 1st Respondent is sold.

[26] Likewise, if the 1st Respondent is liquidated, either voluntary or by way of a compulsory sequestration, the Applicant's claim becomes a claim against the company and is not extinguished for that reason.

[27] There is therefore no reason why I should, in order to protect the Applicant's claim, interdict anybody from selling or winding up the 1st Respondent.

[28] The matter goes further than that. In its dispute with the 1st Respondent, whatever the merits of it may be, there was no need to join the respondents being the 5th Respondent through to the 24th Respondent. They are not parties to the dispute between the Applicant and the 1st Respondent and there is nothing before me which indicates that either of them were instrumental or are instrumental in disposing of or winding up the 1st Respondent.

[29] It was unwise on the part of the Applicant to have joined them in these proceedings. The Applicant in his address made much of the fact that he is seeking justice and that reliance should not be placed on technicalities.

[30] I understand from that he is asking me to dismiss the point of urgency. Whereas it is true that justice is attained through aggrieved persons approaching the Court, it is equally true that in so approaching the Court they should do so in an orderly process because justice can only be dispensed with an orderly manner.

[31] That is what the Rules of Court were designed to achieve. The Rules of Court are not mere technicalities, they are substantive rules of law with which Applicants who approach the courts must comply, and the Applicant will do well to bear that in mind in seeking justice in the courts.

[32] For these reasons I find that the Applicant was wrong in approaching the Court on an urgent basis, having made out no case for such relief and in the result the matter is struck from the roll.

[33] The Applicant is ordered to pay the costs of the Respondents.

MILLER, AJ

ON BEHALF OF APPLICANT

In Person

ON BEHALF OF 13TH, 15-18TH & 23RD RESPONDENTS
INSTRUCTED BY Government Attorney

Ms. Potgieter

ON BEHALF OF 5TH & 10TH RESPONDENTS
INSTRUCTED BY G.F. KOPPLINGER

Mr. Van Zyl

ON BEHALF OF 22ND RESPONDENT

Ms. Rakow

INSTRUCTED BY OFFICE OF THE OMBUDSMAN

**ON BEHALF OF 8TH, 9TH & 11TH RESPONDENTS
INSTRUCTED BY P F KOEP & COMPANY**

Ms Cagnetta

ON BEHALF OF 6TH RESPONDENT

In Person

ON BEHALF OF THE 12TH RESPONDENT

In Person