'Unreportable'

CASE NO.: A 228/2011

IN THE HIGH COURT OF NAMIBIA

In the matter between:

RENATE BRITZ **Applicant**

and

THE MINISTER OF FINANCE **Respondent**

***CORAM*:** **PARKER J**

Heard on: 2012 April 25

Delivered on: 2012 June 5

JUDGMENT

PARKER J: [1] The applicant has brought an application on notice of motion in which she prays for the following relief:

(1) ordering the respondent (in the form of the Receiver of Revenue) to furnish applicant with a meaningful reply to the letters addressed to the Respondent by the applicant's legal representative dated 25 February 2011, 5 April 2011 and 18 July 2011 and in such reply to deal comprehensively with issues raised in the letters.

(2) ordering the respondent to pay the costs of this application.

(3) further and alternative relief or alternative relief.

[2] It is crucial in the present proceedings to signalize the point that the founding affidavit is made by Mr Andreas Vaatz, 'the legal representative of the Applicant', who has filed a confirmatory affidavit. The respondent has moved to reject the application, and Mr Alfred Forbes, the Receiver of Revenue for the Southern Regional Office, has filed an answering affidavit.

[3] I must make the initial point that despite the fact that this application has been argued extensively and a number of authorities have been referred to me it seems to me that this application falls within an extremely short, narrow and simple compass and also that the decision I make should be reasonable and fair in the sense that such decision ought to be proactive and practical in the circumstances of the case.

[4] The pith and marrow of the relief applicant prays for, as I see it, is the following. It is not only that the respondent should be compelled to reply to certain letters addressed to the respondent by the applicant but also that the applicant's response should be (1) 'meaningful' and (2) should 'deal comprehensively with the issues raised in the letters'. It follows, in my view, that the essence of the present case is polar apart from, for instance, a case where an applicant approaches the Court for an order compelling a respondent (1) to discover a certain document, (2) to give reasons for a decision made by the respondent, or (3) to produce the record of a decision-making proceeding. That being the case, I do not think the cases referred to me by counsel are of any real assistance on the point under consideration.

[5] In the instant case, from the papers filed of record, the respondent says her representatives 'gave replies to each and every letter' that was sent to them by the applicant, even though there may have been 'some delay' in giving such replies. The respondent agrees that the respondent's representatives did reply to the letters from the applicant; and so what the applicant takes issue with is the respondent '[N]ot promptly replying to my letters'; it is not the respondent 'not replying to my letters'. Without a doubt, there is a thick shade of difference between 'not replying to my letters' and 'not promptly replying to my letters'. As I have said previously the issue, as I see it, is not that the respondent did not reply to the applicant's letters; the issue is rather that the respondent did not reply to the letters promptly to the applicant's liking and also that, as far as the applicant is concerned, the contents of the replies are not 'meaningful' and they do not 'deal comprehensively with the issues raised in the letters'. And I gather from the respondent's papers that as far as the respondent is concerned, the contents of the replies, *pace* the applicant, have meaning and they deal with all aspects of the issues raised by the applicant. The respondent does not end there. The respondent states further:

> '6.16 I want to emphasise that the Respondent has an open-door policy. If any taxpayer is not satisfied with whatever issue, they are welcome to attend to the office of the Respondent to discuss their issues. We must all appreciate the fact that everything cannot always be solved in writing and in person consultation becomes necessary at times. This is proven by the unfortunate situation that the Applicant finds herself in.
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> 6.17 The Applicant was free to attend to the office of the Respondent to find clarity on issues that remained unresolved, yet chose to write repeated letters which seemed to be leading nowhere.'

[6] I accept what the respondent states as sensible and reasonable. As I have said previously, the present application is not about the Court being asked by an applicant to make an order to compel a respondent to discover documents, to give reasons for his or her or its decision, or to provide the record of a decision-making proceeding. I note that it behoves this Court to grant orders that are not only fair and reasonable, but also proactive and practical; otherwise the orders become purposeless in the sense that they do not really do justice to the parties on the basis that the orders do not solve the disputes between the parties. That being the case, I think it would not meet the justice of the present case if the Court granted an order to compel the respondent to respond to the letters; only for the respondent to be told by the applicant that the reply is not 'meaningful' or that the reply does not 'deal comprehensively with the issues raised in the letters', particularly where it is not part of the function of the Court to prescribe to public servants in what particular manner and in what particular form they should answer queries and concerns raised by their clientelé on any issue they are seized within in the administration of a particular statute.

[7] In the instant matter, what the applicant seeks is explanation and clarity respecting the issues that have remained unresolved, according to her. In this regard I accept the respondent's averment that the repeated toing and froing of letters between the applicant and the respondent will not bring clarity. Additionally, I find that the repeated toing and froing of letters is bound to continue to create more heat than light and will not attain closure; and this Court – I must emphasize – should not be a part, or be seen to be a part, of the perpetuation of such unsavoury and purposeless exercise. And respecting the issue of costs; in the nature of this matter and the view I have taken of it and after due consideration of the facts at play, I come to the conclusion that in the circumstances, this is a proper case where it would be

fair and reasonable for the parties to pay their own costs. It would seem both the applicant and the respondent's representatives have not seen the efficacy of tête-á-tête between public servants and their clientelé in situations as the present. I do not find any firm communication from the representatives inviting the applicant to call at their offices in order to deal with her queries and concerns in a one-on-one discussion, albeit I note that the respondent's representatives have not shut their official door in the face of the applicant.

[8] In sum, in my view, the material issue is certainly not whether the respondent's representatives have responded to the applicant's queries and concerns or responded to them within a reasonable time. Surely, the material issue must be whether the representatives have given the applicant a reasonably satisfactory explanation to her queries and concerns. And so, therefore, there is, in my opinion, the sheer sensibleness and reasonableness in the applicant and the respondent's representatives meeting face to face so that the applicant can be given in a language she understands not only explanation but also clarification and elucidation in respect of any queries and concerns she may have. Such explanation, clarification and elucidation have not been undertaken and cannot be undertaken through the otiosely endless exchange of letters. I have no doubt in my mind that the order appearing, hereunder, is a purposeful and efficacious alternative relief and it is, in the circumstances of the case, a 'necessary and appropriate' order that secures, within the meaning of Article 25(2) of the Namibian Constitution, the interests of the applicant or any right she may have.

[9] Whereupon, for all the aforegoing considerations, I make the following order:

(1) The application is dismissed.

(2) The applicant must attend at the offices of the Receiver of Revenue for the Southern Regional Office (of the Respondent), Inland Revenue Building, Hampie Plichta, Keetmanshoop, at a reasonable time, on or before 29 June 2012, to be arranged with the Receiver of Revenue for the Southern Regional Office, and the said Receiver of Revenue or any authorized person acting in the post of Receiver of Revenue for the Southern Regional Office must personally attend to the applicant in order to explain, clarify and elucidate any issues, in a language the applicant understands, that she has raised in all the letters that the applicant has as at the date of the bringing of the present applicant sent to the Receiver of Revenue of the Southern Regional Office and referred to in the papers before this Court in this application.

(3) There is no order as to costs.

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PARKER J

COUNSEL ON BEHALF OF THE APPLICANT:	Mr A Vaatz
Instructed by:	Andreas Vaatz & Partners
COUNSEL ON BEHALF OF THE RESPONDENT:	Ms L Frederick
Instructed by:	Government Attorney