



**CASE NO.: A 27/2012**

**REPORTABLE**

**IN THE HIGH COURT OF NAMIBIA**

In the matter between:

<b>AUGUST MALETZKY</b>	<b>1<sup>ST</sup> APPLICANT</b>
<b>WILMA EVELINE HOABES</b>	<b>2<sup>ND</sup> APPLICANT</b>
<b>SALMAAN DHAMEER JACOBS</b>	<b>3<sup>RD</sup> APPLICANT</b>
<b>ANNARINE JACOBS</b>	<b>4<sup>TH</sup> APPLICANT</b>
<b>CALISTA ANNA BALZER</b>	<b>5<sup>TH</sup> APPLICANT</b>
<b>RONNEY REINHOLD HANGULA</b>	<b>6<sup>TH</sup> APPLICANT</b>
<b>SIEGFRIED BROCKERHOFF</b>	<b>7<sup>TH</sup> APPLICANT</b>
<b>EVANGELINE EICHAB</b>	<b>8<sup>TH</sup> APPLICANT</b>
<b>DORKA VICTORINE SHIKONGO</b>	<b>9<sup>TH</sup> APPLICANT</b>
<b>EDUARD PAUL XOAGUB</b>	<b>10<sup>TH</sup> APPLICANT</b>
<b>FRANCIS EVELINE XOAGUS</b>	<b>11<sup>TH</sup> APPLICANT</b>
<b>ABRAHAM MAPELA PETRUS</b>	<b>12<sup>TH</sup> APPLICANT</b>
<b>ROMEO MOUTON</b>	<b>13<sup>TH</sup> APPLICANT</b>
<b>ANTON HERMANN</b>	<b>14<sup>TH</sup> APPLICANT</b>
<b>JOHANNES NEUAKA</b>	<b>15<sup>TH</sup> APPLICANT</b>
<b>LISA RHODE</b>	<b>16<sup>TH</sup> APPLICANT</b>
<b>FILIMON HOXOBEB</b>	<b>17<sup>TH</sup> APPLICANT</b>
<b>FRANCOIS DARIES</b>	<b>18<sup>TH</sup> APPLICANT</b>

<b>FRANS NAIBAB</b>	<b>19<sup>TH</sup> APPLICANT</b>
<b>ISABELLA ISABEAU</b>	<b>20<sup>TH</sup> APPLICANT</b>
<b>CORISTOFFEL STEENKAMP</b>	<b>21<sup>ST</sup> APPLICANT</b>
<b>KATRINA FRANCINA STEENKAMP</b>	<b>22<sup>ND</sup> APPLICANT</b>
<b>LAZARUS GAROEB</b>	<b>23<sup>RD</sup> APPLICANT</b>
<b>ANNA MARIE HENDRIKS</b>	<b>24<sup>TH</sup> APPLICANT</b>
<b>VICKSON HANGULA</b>	<b>25<sup>TH</sup> APPLICANT</b>
<b>GAFENI HAIKOTI</b>	<b>26<sup>TH</sup> APPLICANT</b>
<b>PAULINA GARISES</b>	<b>27<sup>TH</sup> APPLICANT</b>
<b>PHILLIPUS GARISEB</b>	<b>28<sup>TH</sup> APPLICANT</b>
<b>JOHANNES HAGGINS AUPAPA NIIGAMBO</b>	<b>29<sup>TH</sup> APPLICANT</b>

and

<b>STANDARD BANK NAMIBIA LIMITED</b>	<b>1<sup>ST</sup> RESPONDENT</b>
<b>NEDBANK NAMIBIA LIMITED</b>	<b>2<sup>ND</sup> RESPONDENT</b>
<b>HES SHIKONGO</b>	<b>3<sup>RD</sup> RESPONDENT</b>
<b>FIRST NATIONAL BANK OF NAMIBIA LIMITED</b>	<b>4<sup>TH</sup> RESPONDENT</b>
<b>WINDHOEK MUNICIPALITY COUNCIL</b>	<b>5<sup>TH</sup> RESPONDENT</b>
<b>SWABOU INVESTMENTS (PTY) LTD</b>	<b>6<sup>TH</sup> RESPONDENT</b>
<b>VSV ENTERPRISES NUMBER SIXTY CC AND/OR NOMINEE J P VAN STADEN OR L J VAN STADEN</b>	<b>7<sup>TH</sup> RESPONDENT</b>
<b>ALEXANDER HOVEKA</b>	<b>8<sup>TH</sup> RESPONDENT</b>
<b>HARTMUST GERHARD FOELSCHER</b>	<b>9<sup>TH</sup> RESPONDENT</b>
<b>MINISTER OF JUSTICE</b>	<b>10<sup>TH</sup> RESPONDENT</b>
<b>REGISTRAR OF HIGH COURT</b>	<b>11<sup>TH</sup> RESPONDENT</b>
<b>CLERK OF THE MAGISTRATE'S COURT</b>	<b>12<sup>TH</sup> RESPONDENT</b>
<b>REGISTRAR OF DEEDS</b>	<b>13<sup>TH</sup> RESPONDENT</b>
<b>ATTORNEY-GENERAL</b>	<b>14<sup>TH</sup> RESPONDENT</b>
<b>THE DEPUTY-SHERIFF</b>	<b>15<sup>TH</sup> RESPONDENT</b>
<b>VAN DER MERWE-GREEFF INC.</b>	<b>16<sup>TH</sup> RESPONDENT</b>
<b>BANK WINDHOEK LIMITED</b>	<b>17<sup>TH</sup> RESPONDENT</b>



**MILLER, AJ.:** [1] This is an interlocutory matter in terms of Rule 30 of the Rules of this Court.

[2] The application is directed at what certain of the respondents allege are irregular steps taken by the applicants when they instituted motion proceedings against them and several other respondents.

[3] At the hearing before me Mr. Totemeyer SC together with Mr. Obbes appeared for the 1<sup>st</sup>, 6<sup>th</sup> and 18<sup>th</sup> respondents. Mr. Totemeyer SC together with Ms. van der Westhuizen also appeared for the 5<sup>th</sup> respondent. Mr. Mouton appeared for the second respondent. The first and 10<sup>th</sup> applicants appeared in person to oppose the matter.

[4] As matters turned out I heard submissions from Mr. Totemeyer only on behalf of the respondents, Mr. Mouton associated himself with the submissions made by Mr. Totemeyer. Mr. Maletzky, the first applicant was the only applicant to address me at the hearing.

[5] The first applicant submitted as a first point in limine that there was no clarity as to which legal practitioners had been instituted by the respondents. He went on to challenge the authority of the legal practitioners to act on behalf of the respondents and submitted that it was incumbent upon the legal practitioners to file a power of attorney authorizing them to appear and act on behalf of the respondents. I need not dwell on this point save to say it has no merit

[6] There is no such requirement in motion proceedings. The point taken is dismissed.

[7] In turn to consider the grounds advanced by Mr. Totemeyer I bear in mind that in so doing, I have discretion to grant or refuse the relief sought. My discretion must be exercised judicially, and based upon a consideration of all the circumstances and what is fair to both sides. ***Northern Assurance Co. Ltd v Somdaka 1960 (1) SA 588 A.***

[8] A Court will be entitled to condone in appropriate circumstances irregularities which do not have as their result that the other party is prejudiced by such irregularities.

[9] In ***SA Lewensversekering v Leuw NO 1981 (4) SA 329 (O) Flemming J***, held that:

“...the exercise of the Court’s discretion has been consistently led by the presence or absence of prejudice in relation to the exercise of a party’s procedural right or duty to respond to a communication received, or to the taking of a next step in the sequence of permissible procedures to ripen the matter for properly orderly hearing. Where such prejudice is absent, a decision to set the irregular proceeding aside should not be granted.”

[10] Likewise in *Trans-African Insurance Co. Ltd v Mololeka 1956 (2) SA 273 (A)* the Court stated at page 278 F the following:

“No doubt parties and their legal practitioners should not be encouraged to become slack in the observance of the Rules, which are an important element in the machinery for the administration of justice. But on the other hand technical objections to less than perfect procedural steps should not be permitted in the absence of prejudice to interfere with the expeditious and, if possible, inexpensive decision of cases on their real merits.”

[11] I do not deem it necessary to deal exhaustively with each of the steps taken by the applicants which the respondents contend are irregular. I am prepared to accept that individually and collectively, the steps taken and complained of are to a greater or lesser degree irregular thus rendering the papers filed by the applicants less than perfect.

[12] However when looking at the papers as a whole imperfect as they may be, none of the respondents who complain about them, can show that they are prejudiced by these irregularities.

[13] In the result the applications are dismissed with costs, such costs to be limited to necessary expenses and disbursements.

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**MILLER AJ**

**ON BEHALF OF THE 1<sup>ST</sup> & 10<sup>TH</sup> APPLICANTS:**

Appearing in person

**ON BEHALF OF THE 1<sup>ST</sup>, 6<sup>TH</sup> & 18<sup>TH</sup> RESPONDENTS:** Mr. Totemeyer assisted by

Mr. Obbes

**INSTRUCTED BY:**

Fisher, Quarmby & Pfeifer

**ON BEHALF OF THE 5<sup>TH</sup> RESPONDENT:**

Mr. Totemeyer assisted by

Ms. van der Westhuizen

**INSTRUCTED BY:**

Etzold-Duvenhage

**ON BEHALF OF THE 2<sup>ND</sup> RESPONDENT:**

Mr. Mouton

**INSTRUCTED BY:**

Koep & Partners