

HIGH COURT OF NAMIBIA



MAIN DIVISION, WINDHOEK

JUDGMENT

Case No.: A 199/2012

IN THE HIGH COURT OF NAMIBIA

In the matter between:

HENDRIK CHRISTIAN

APPLICANT

and

THE CHAIRPERSON OF THE DISCIPLINARY

COMMITTEE

1<sup>ST</sup>

RESPONDENT

ADOLF HANS GERHARD DENK

2<sup>ND</sup> RESPONDENT

RUBEN SAMUEL PHILANDER

3<sup>RD</sup> RESPONDENT

THE LAW SOCIETY OF NAMIBIA

4<sup>TH</sup> RESPONDENT

**Neutral citation:** *Christian v The Chairperson of the Disciplinary Committee* (A 199/2012) [2013] NAHCMD 177 (21 June 2013)

**Coram:** MILLER AJ

**Heard:** 04 June 2013

**Delivered:** 21 June 2013 (Ex-Tempore)

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ORDER

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The Rule 30 application succeeds with costs. The first respondent is directed to file his answering affidavits within 20 days from today's date.

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### JUDGMENT

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MILLER AJ:

[1] The applicant in this matter appears before me in person. By way of background it is necessary to state that the applicant instituted proceedings by way of Application against *inter-alia*, the Chairman of the Disciplinary Committee for Legal Practitioners who was cited in those proceedings as the first respondent. The relief claimed by the applicant concerns the setting aside and reviewing of certain decisions taken by the first respondent pursuant to a complaint that the applicant had lodged against the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents who are both legal practitioners.

[2] On behalf of the first respondent a Notice of Intention to oppose the proceedings was filed on the 18<sup>th</sup> of September 2012, that Notice was signed and issued by the Government Attorney. In response thereto the applicant thereupon filed a document on the 10<sup>th</sup> of October 2013 which bears the title "Notice of Objection". The so-called "Notice of Objection" become in the subject of an Application in terms of Rule 30 to set it aside as an irregular step.

[3] It is the Rule 30 application which was then argued before me and with which this judgment is concerned. The Notice of Objection concerns the fact if I understood the applicant correctly that the Government Attorney has not provided any proof or its authority to oppose the proceedings instituted by the applicant on behalf of the first respondent and during the course of argument I understood Mr. Christiaan also to contend that in law the Government Attorney is not entitled to represent the first respondent in as much as he contends that the first respondent is not an agency or Ministry of Government.

[4] Some point was also taken regarding the late filing of the record. However by the time the matter came to be argued before me the record had been filed and I need not to say anything or about that aspect of the matter.

[5] Steps taken in proceedings are only those permitted by the Rules of the Court. If they do not they are irregular and will be set aside if it causes prejudice to, in this case the first respondent.

[6] It should be noted that nowhere in the Rules relating to motion proceedings is provision made for the filing of a document such as the Notice of Objection that the applicant had filed. I am conscious of the fact the applicant is a lay person and for that reason perhaps not quite familiar with the Rules of the Court.

[7] If in the instant case the issue of the Government Attorney's authority and its ability to represent the first respondent are to become issues, they are raised in the affidavits. I am certain that during the course of preparing affidavits on behalf of the first respondent. In view of the fact that the Notice of objection has now alerted the first respondent to the purported attack upon its legal representation and the authority of those who represent it will be dealt with by the first respondent in its affidavit and clearly the applicant will have an opportunity to respond thereto in a replying affidavit. If it is to remain an issue it can be heard as a separate issue during the course of the proceeding before the merits of the matter are dealt with. Those are the avenues that are open to the applicant. In that sense the Notice of Objection is premature and can only be dealt with once the papers have been filed and pleadings are closed.

[9] Clearly the first respondent is prejudiced by the fact that the Notice of Objection was filed and I will therefore set it aside.

[10] The Rule 30 Application therefore succeeds with costs.

[11] The first respondent is directed to file his answering affidavits within 20 days from today's date.

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P J MILLER  
Judge

APPEARANCES

APPLICANT: IN PERSON

FIRST RESPONDENT: C MACHAKA  
Of Government Attorneys

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