



HIGH COURT OF NAMIBIA MAIN DIVISION, WINDHOEK

REASONS

Case no: I 471/2010

In the matter between:

1.1.1.1.

BV INVESTMENTS 264 CC

FIRST APPLICANT

FREDRICH WILLY SCHROEDER

SECOND APPLICANT

and

FNB NAMIBIA HOLDINGS LTD

FIRST RESPONDENT

REPUBLIKEIN

SECOND RESPONDENT

RONELLE RADEMEYER

THIRD RESPONDENT

Neutral Citation: *BV Investments 264 CC of FNB Namibia Holdings Ltd*
(I 471/2010) [2013] NAHCMD 29 (15 February 2013)

Coram: SCHIMMING-CHASE AJ

Heard: 8 February 2013

Delivered: 15 February 2013

Flynote: Practice Directive 26(2)(b) - if opposed interlocutory matter can't be heard it must be removed from the roll - special power of attorney - not

prerequisite for valid or proper notice of opposition in motion proceedings

(b) **Summary:** The applicants launched an interlocutory application for an order declaring “that the High Court judgment, heard on 30 November 2010 and delivered on 12 January 2011, be declared void”. This application was set down on an unopposed basis on the Motion Court roll. One day before Motion Court a notice to oppose the application was delivered on behalf of the first respondent and on the Motion Court date a notice to oppose the application was delivered on behalf of the second and third respondents. Second applicant indicated that the application was unopposed because the notices to oppose delivered on behalf of the respondents were defective due to the fact that special powers of attorney were not filed on behalf of the respondents. The second applicant further submitted that as juristic persons, special powers of attorney should have been simultaneously filed as a result of which it was submitted that the application was not opposed.

ORDER

(a) The matter is removed from the roll

REASONS

SCHIMMING-CHASE, AJ

(c) On 8 February 2013 and at Motion Court I ordered that the applicants’ application be removed from the roll. On 11 February 2013 I was requested by the second applicant to provide reasons for the Court Order. I now provide the reasons below.

(d) On 29 January 2013 the applicants launched an interlocutory application for an order declaring “that the High Court judgment, heard on 30 November 2010

and delivered on 12 January 2011, be declared void". This application was set down on an unopposed basis on the Motion Court roll. The second applicant indicated that the application was unopposed on the Motion Court return dated 6 February 2013.

(e) On 5 February 2013, a notice to oppose the application was delivered on behalf of the first respondent by Van der Merwe-Greeff Incorporated. On 6 February 2013, a notice to oppose the application was delivered on behalf of the second and third respondents by Koep & Partners.

(f) When the matter was called during Motion Court proceedings, the second applicant submitted that the notices to oppose delivered on behalf of the respondents were defective due to the fact that special powers of attorney were not filed on behalf of the respondents. The second applicant further submitted that as juristic persons, special powers of attorney should have been simultaneously filed as a result of which it was submitted that the application was not opposed. I point out at this stage that the third respondent is not indicated as a juristic person.

(g)

(h) It is a well-established practice that Motion Court is convened specifically to deal with unopposed matters. When a matter becomes opposed it is not heard at Motion Court but is set down for hearing on another date. With regard to an interlocutory application such as that lodged by the applicants, it is usually heard on the following Tuesday or on a date to be determined by the Registrar. In this regard, Practice Directive 26(2)(b) provides that the Presiding Judge must not postpone any interlocutory matter at the request of a party or all the parties. If the matter cannot be heard, it must be removed from the roll.

(i)

(j) As regards the necessity to file a special power of attorney in motion proceedings when a notice to oppose is delivered on behalf of a juristic person, this is not a prerequisite for a valid or proper notice of opposition.

(k) In this regard, Rule 7(1) of the High Court Rules provides that before summons is issued in any action at the instance of the plaintiff's legal

practitioner, that practitioner shall file a power of attorney to sue. Rule 7(2) in turn provides that where a notice of intention to defend is filed with the Registrar by a legal practitioner, that legal practitioner shall *parri passu* file a power of attorney authorising him or her to defend. The Rules do not provide that a special power of attorney must be filed in motion proceedings.

(l) I am fortified in my interpretation of the above Rules by the recent Supreme Court decision of Rally for Democracy and Progress v Electoral Commission of Namibia¹ where it was pointed out at paragraph 43 of that judgment, with regard to challenges to asserted authority of individuals to act on behalf of juristic persons in motion proceedings, that it would normally suffice if the individual who institutes the proceedings on behalf of the artificial person states under oath that he or she has been duly authorised to do so. By the same token taking the provisions of Rule 7 into consideration, the same applies to application proceedings and it suffices for the authority to be alleged in the opposing papers to be delivered subsequent to the notice of intention to oppose.

(m) In a result, without pronouncing myself on the merits of the application, I hold that the application is indeed opposed and should in terms of Practice Directive 26(2)(b) be removed from the roll as it cannot be heard until opposing and replying papers are filed, after which the matter will be set down for hearing on a date to be determined by the Registrar, subsequent to the Applicants requesting the Respondents to meet at the Registrar's office in order to determine a suitable date.

(n) It is for the above reasons that the matter was removed from the roll.

EM SCHIMMING-CHASE
Acting Judge

¹Unreported delivered on 25 October 2012 in Case No SA 12/2011

APPEARANCES

SECOND APPLICANT: F W Schroeder In Person

FIRST RESPONDENT: J Schickerling
Instructed by Van der Merwe-Greeff, Windhoek