

REPUBLIC OF NAMIBIA

NOT REPORTABLE



HIGH COURT OF NAMIBIA MAIN DIVISION, WINDHOEK
JUDGMENT

Case no: **A 219/2010**

In the matter between:

PHILLIPUS LONGER

APPLICANT

and

THE MINISTER OF SAFETY AND SECURITY

1ST RESPONDENT

THE INSPECTOR GENERAL OF THE NAMIBIAN POLICE

2ND RESPONDENT

Neutral citation: *Longer v The Minister of Safety and Security* (A 219/2010) [2013]
NAHCMD 376 (26 November 2013)

Coram: DAMASEB, JP

Heard: 26 November 2013

Delivered: 26 November 2013 (*Ex tempore*)

ORDER

The application is struck from the roll. A respondent, who wishes to seek an order of costs may approach the court, by notice to the applicant, seeking such an order.

JUDGMENT

Damaseb JP:

[1] The Appellant is a former police officer. He was charged with misconduct arising from a criminal conviction and discharged from the police force on 24th of October 1993. The conviction, which formed the basis for his dismissal, was set aside in 2001. Following the reversal of his conviction on appeal, the applicant resolved to challenge his dismissal. There was a hurdle in his way and that hurdle is s 39 of the Police Act which states that:

‘in any civil proceedings against any person in respect of anything done in pursuance of this Act shall be instituted within 12 months after the course of action arose and no notice in writing of any such proceedings and of the course thereof shall be given to the Defendant not less than one month before it is instituted provided that the Minister may at any time waive compliance with the provisions of the subsection’.

[2] Now in the case of *Majjedt*¹, the Supreme Court had held that s 39 is not unconstitutional. Therefore, to bring civil proceedings against the State, in this case the Inspector General of Police or the Minister of Safety and Security, the applicant, being out of time as it is common cause, needed the Minister’s waiver. He applied to the Minister for a waiver. The Minister refused the waiver. It appears, on the one hand, that the applicant wants to challenge the refusal of the waiver and, on the other hand, to obtain an order of this court for his re-instatement and payment of all his benefits for the period that he was discharged.

[3] The applicant has filed of record documents so numerous that it is impossible to count them.

[4] The file is in such a state that I do not know just what constitutes the record in these proceedings and the exchange I just had with the Applicant has confirmed that conclusion. There is no Index and the documents on record are not in any particular

¹*Ministry of Home Affairs v Madjedt and others* 2007 (2) NR 475 (SC).

sequence. True, he is unrepresented, but this court has no duty to provide such assistance to the unrepresented litigant. In some of the documents I have seen at a cursory glance, he seems to challenge the constitutionality of certain actions of the police and certain instruments of the police issued under the Police Act. For example I will cite (and this is a document dated 7th of July 2010) - and while there I want to point out that he refers me to a subsequent document dated 2012 – and he says in paragraph 9 of an affidavit that accompanies that document which is ‘Notice of Action in terms of s 39 of the Police Act: One month notice’ as he calls it; and then he gives certain particularised paragraphs in which, he states certain relief which, on the face of it, also looks inept. At paragraph 9 he says:

‘The Applicant humbly prays and request the Hon Court to declare issued Police 168 invalid and unconstitutional as the matter is contemplated by Chapter 15 Article 116(2) of the Namibian Constitution whether it was a instructions of a Inspector General of police fall foul and violate Namibian Constitutional illegal. The law enforcement cannot allow it to violate the Namibian Constitution. The police have to protect the Namibian Constitution. Namibian Constitution remains supreme law, never prescript and a live, even the Police act cannot be above Namibian Constitution, therefore applicant request Hon Court to look into this case on the merits.’

[5] It goes on in paragraph 10:

‘Should Hon Court dismiss this Application, the applicant request that each party to pays the own cost, and allows applicant to appeal to Supreme Court to consider the matter on the merits, and the dismissal of the High Court, if Hon Court dismiss the motion. Hon Inspector General employs. Each year thousands members, but when Applicant claims there are no vacant posts-see attached letter. Applicant a poor man, he cannot afford this service of legal practitioner.’

[6] I cited those excerpts simply to show the extent of the confusion created by the documents filed by the applicant of record. This is probably the most incomprehensible litigation ever filed in this court: I do not know what the applicant wants and against whom.

[7] The Constitution guarantees everyone a right of access to court. The fact that a litigant has no means to engage a lawyer privately should never become a bar to him or her being afforded every reasonable opportunity to present his or her case to the court. I am aware that several practitioners were appointed to assist the applicant but all withdrew. It is no place of mine to find out why. The court's inclination to afford a self-represented litigant the opportunity to present his case before court is however no invitation to 'anything goes' and, therefore, anarchy.

[8] Because of it being unclear to the court as to what procedure the applicant has chosen and what he requires by way of defined relief to which the respondents, who under Article 12 of the Constitution also have the right to a fair trial, can intelligently reply to, I am compelled to strike the matter from the roll.

[9] This matter is struck from the roll. A respondent who wishes to seek an order of costs may approach the court, by notice to the applicant, seeking such an order

PT Damaseb
Judge-President

APPEARANCE

APPLICANT

IN PERSON

RESPONDENT
OF

J !NCUBE
GOVERNMENT
WINDHOEK

ATTORNEYS,