



HIGH COURT OF NAMIBIA MAIN DIVISION, WINDHOEK

JUDGMENT

Case no: A196/2012

In the matter between:

1.1.1.1.

**HENDRIK CHRISTIAN
APPLICANT**

and

**NAMIBIA FINANCIAL INSTITUTIONS
SUPERVISORY AUTHORITY**

RESPONDENT

Neutral citation: Christian v Namibia Financial Institutions Supervisory Authority (A 196/2012) [2013] NAHCMD 99 (12 April 2013)

Coram: Smuts, J
Heard: 18 January 2013
Delivered: 18 January 2013
Reasons sought on: 4 March 2013
Reasons provided on: 12 April 2013

Flynote: Applicant's application for recusal not served on respondent – the

latter entitled to service and having an interest in its outcome – application struck from the roll. Opposed application under Rule 8 (2)(b) of the Supreme Court rules. No heads of argument filed by the applicant. Matter struck from the roll with costs and not to be enrolled by him until he pays the respondent's taxed costs.

REASONS

SMUTS, J

(b) The applicant filed an application in terms of Rule 8(2)(b) of the Supreme Court Rules seeking to be released from the obligation to provide security for the respondent's costs of appeal. He also sought condonation for the late filing of the application. It was launched on 23 August 2012.

(c)

(d) The applicant also filed a recusal application on the morning of the hearing on 18 January 2013. After hearing the parties, I struck the recusal application with costs and made the following order in respect of the application in terms of Rule 8(2)(b) of the Supreme Court Rules (the main application)

“The application in terms of Rule 8 (2)(b) of the Rules of the Supreme Court is struck from the roll with costs.

The applicant is not permitted to re-enrol the application until the respondent's taxed costs have been paid in full. This would not preclude the respondent from enrolling the matter.”

(e) On 4 March 2013, the applicant requested reasons for these orders. I set out the background to those orders and my reasons for them.

[4] The main application was opposed by the respondent. It was referred to case management and on 14 November 2012, this court in case management

postponed the matter to 18 January 2013 for the hearing of the application.

(f)

[5] The respondent duly filed heads of argument in advance of the hearing. But the applicant failed to do so in accordance with practice directives.

(g) [6] On the morning of the hearing (on 18 January 2013) the applicant filed a recusal application. It showed no signs of service on the respondent. When the matter was called, the applicant sought to move the recusal application. I then enquired from the applicant if that application had been served on the respondent. He confirmed that it had not been served on the respondent and added that it had nothing to do with the respondent.

(h)

(i) [7] Mr Philander, who appeared for the respondent, confirmed that no recusal application had been served on the respondent. He also submitted that the respondent had an interest in such application and required to be served.

(j) [8] I then proceeded to strike the recusal application with costs. As I said at the time, I did so because the respondent plainly had an interest in such an application and was entitled to be served with it. The failure to do so meant that it should be struck. This is quite apart from any defects it had such as the document purporting to be the founding affidavit in support of it was not by the deponent.

[9] As to the application in terms of Rule 8 (2)(b) of the Supreme Court Rules, the applicant confirmed that he had not filed heads of argument in accordance with the practice directives. He was aware of the obligation to do so. There was no application for condonation for failing to do so. Nor was any explanation sought to be proffered for the failure to file heads. Nor were any heads of argument tendered in court.

[10] Mr Philander requested that I hear the application as the respondent sought finality of the matter. He submitted that the application was a delaying tactic as the judgment appealed against had been handed down in May 2011 and the obligation to find security or bring an application of this nature arose

soon afterwards. This application had however been brought more than a year later (on 23 August 2012). It was the respondent which had sought the date of hearing in the course of case management on 14 November 2012 in the absence of the applicant who failed to attend the case management hearing. The respondent was required to cause service of the court order postponing the matter for the designated date of hearing of 18 January 2013. That order was served by the Deputy-Sheriff.

[11] In view of the practice directive and the need to file heads of argument, and the failure on the part of the applicant to have filed heads or even seek condonation for that failure, I resolved to strike the application from the roll with costs. In doing so, I took into account that the applicant is a lay litigant and the need for a court to permit latitude with regard to its procedures where persons are not acquainted with them. But in this instance the applicant is well aware of the need for heads of argument to be filed in opposed applications and provided no explanation for his failure to do so when this was raised with him. In view of the history of matter as set out in the founding papers and their annexures and in view of submissions before me and in the exercise of my discretion, I further directed that the applicant is not permitted to re-enrol the main application until the respondent's taxed costs had been paid in full. I further directed that this would not preclude the respondent from enrolling the matter.

[12] These are the reasons for the orders I made on 18 January 2013.

(k)

DF SMUTS
Judge

APPEARANCE

APPLICANT:

H. Christian

In Person

RESPONDENT:

R. Philander

Instructed by Lorentz Angula Inc.