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REPUBLIC OF NAMIBIA

NOT REPORTABLE



HIGH COURT OF NAMIBIA MAIN DIVISION, WINDHOEK

RULING

Case no.: A 67/2014

In the matter between:

FREDRICH WILLY SCHROEDER

APPLICANT

and

GOVERNMENT OF THE REPUBLIC OF NAMIBIA

FIRST RESPONDENT

MINISTER OF SAFETY AND SECURITY

SECOND RESPONDENT

**THE INSPECTOR-GENERAL OF THE
NAMIBIAN POLICE**

THIRD RESPONDENT

DETECTIVE EIMAN

FOURTH RESPONDENT

MINISTER OF JUSTICE

FIFTH RESPONDENT

JOHN SINDANO

SIXTH RESPONDENT

**THE MUNICIPAL COUNCIL FOR THE
MUNICIPALITY OF WINDHOEK**

SEVENTH RESPONDENT

ABRAHAM KANIME

EIGHT RESPONDENT

ANDRÉ LOUW

NINTH RESPONDENT

DESIREE LOUW

TENTH RESPONDENT

Neutral citation: *Schroeder v Government of the Republic of Namibia* (A 67/2014) [2014] NAHCMD 124 (3 April 2014)

Coram: UNENGU AJ

Heard: 3 April 2014

Delivered: 3 April 2014

ORDER

1. That the point *in limine* by the first, second, third, fourth, fifth and sixth respondents is upheld.
2. That the application is dismissed with costs on attorney and own client scale, which costs must be paid first before any other application on the same issue is brought to the High Court by the applicant.

JUDGMENT

UNENGU AJ:

[1] The applicant in this matter, Mr Frederich Willy Schroeder, brought an urgent application based on *Mandament van Spolie* today on Thursday, 3 April 2014 at 09h00, seeking the following:

'MANDAMENT VAN SPOLIE

KINDLY TAKE NOTICE that the applicant intends to bring an urgent application on Thursday, 3rd April 2014 at 9h00 or as soon thereafter as applicant may be heard for an order in the following terms:

1. Condoning applicant's non-compliance with the rules of the Honourable Court.
2. Ordering respondents to restore applicant's peaceful and undisturbed possession of the property Erf 1..... J..... S....., H..... Park.
3. Ordering respondents to return applicant's moveable property namely a toolbox, a Bosch heavy-duty grinder and a Bosch heavy-duty drill places in the kitchen at the above property at the time of the spoliation in question.
4. Ordering respondents to hand over to applicant the keys to the property.
5. Order respondents to pay costs of this application.
6. Further and/or alternative relief.

TAKE NOTICE FURTHER that the affidavit of Fredrich Willy Schroeder will be used in support of this application.

TAKE NOTICE FURTHER that the applicants appoint Erf 3..... F..... N..... Street, K..... as the address where they will accept all service of documents and process in the above matter.

KINDLY SET DOWN THE MATTER TO BE HEARD ACCORDINGLY.

Dated at WINDHOEK on this 2nd day of April 2014.'

[2] At 08h30 today, half an hour before the hearing of the urgent application, the applicant filed another application with the Registrar's office in which he applied for my recusal to sit in the urgent application on the grounds:

KINDLY TAKE NOTICE that the applicant herewith applies for the sitting Judge Petrus Unengu on the following grounds:

1. My complaint for bias and maladministration of justice in terms of Section 4(c) of the Judicial Service Act of 1995 against the Judge is still pending with the Judicial service Commission. I have applied for his impeachment.
2. The Judge is Head of the Magistrates Commission and as such has interest in this matter given the involvement of sixth respondent.
3. The Judge refuses to give reasons in case no. I 471/2010 while applicant has requested same. Those reasons have bearing on this matter.
4. The judge does not understand the legal principle of Mandament van Spolie or wilfully ignore it. He can thus not administrate justice in this matter.

Wherefore, the rightful course for the Honourable Judge is to recuse himself to protect the integrity and dignity of this Honourable Court.

KINDLY SET DOWN THE MATTER TO BE HEARD ACCORDINGLY.

Dated at WINDHOEK on this 2nd day of April 2014.'

[3] However, in view of the fact that he did not serve the Recusal Application on the respondents, as they, in law are entitled to be served with such notice, I have disregarded the Recusal application on account of non-service of such application on the respondents and proceeded to hear the urgent application.

[4] Mr Chibwana, counsel for first, second, third, fourth, fifth and sixth respondents raised a point *in limine* against the urgent application which point *in limine* I upheld and made the following order:

1. That the point *in limine* by the first, second, third, fourth, fifth and sixth respondents is upheld.
2. That the application is dismissed with costs on attorney and own client scale, which costs must be paid first before any other application on the same issue is brought to the High Court by the applicant.

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E P UNENGU

Acting Judge

APPEARANCE:

For applicant:

In person

For 1-6 respondents:

Mr Chibwana

Of Government Attorney