REPUBLIC OF NAMIBIA

HIGH COURT OF NAMIBIA MAIN DIVISION, WINDHOEK

***EX TEMPORE* JUDGMENT**

In the matter between: Case no: A 12/2014

ELIAS MICHAEL NARUSEB	**1ST APPLICANT**
JESICA KANDURUVI	**2ND APPLICANT**
CHRISTINA BOCK	**3RD APPLICANT**
MARTHA ENDJALA	**4TH APPLICANT**
KAREEKO KAVARI	**5TH APPLICANT**
PAULINA N IYAMBO	**6TH APPLICANT**
ANANIAS SILAS	**7TH APPLICANT**
MEENUVI HINDJOU	**8TH APPLICANT**
TOMMY N ELIPHAS	**9TH APPLICANT**
URSILA GABOHUMISE	**10TH APPLICANT**
HILDE KAUTONDOKWA	**11TH APPLICANT**
HENDRINA KAMANYA	**12TH APPLICANT**
SHRILY WELLRY AREBES	**13TH APPLICANT**
EVA VAN WYK	**14TH APPLICANT**
HILDA DAUSAB	**15TH APPLICANT**
LORENCIA ROOINASIE	**16TH APPLICANT**
ARON HAINGURU	**17TH APPLICANT**
FRIEDA NGHIDIMBWA	**18TH APPLICANT**
HELGA PAULSE	**19TH APPLICANT**
NGARIKUTUKE TINDA	**20TH APPLICANT**
NDINELAO NGHOLE	**21ST APPLICANT**
ANNA SHETEKELA	**22ND APPLICANT**
ANNA MARIE JACOBS	**23RD APPLICANT**
WOLFGANG RUDOLF SCHAFER	**24TH APPLICANT**
GLADYS KABANGWE	**25TH APPLICANT**
MAGRETH NGOLOLO	**26TH APPLICANT**
WENSTON JANATHAN EINBECK	**27TH APPLICANT**
WILKA MUNALYE	**28TH APPLICANT**
SALAS MBANGUOMBI UARIJE	**29TH APPLICANT**

ELTON JOHN EISEB **30TH APPLICANT**
FLORIDA PLAATJIES **31ST APPLICANT**

and

THE GOVERNMENT OF THE REPUBLIC OF NAMIBIA **1ST RESPONDENT**
(THE MINISTER OF HEALTH AND SOCIAL SERVICES)
THE MINISTER OF SAFETY AND SECURITY **2ND RESPONDENT**

Neutral citation: *Naruseb v The Government of the Republic of Namibia* (A12/2014) [2014] NAHCMD 74 (19 February 2014)

Coram: GEIER J
Heard: **19 February 2014**
Delivered: **19 February 2014**

Flynote: Legal practitioner - Misconduct - Unprofessional conduct - what constitutes - applicants' legal practitioner failing to appear on two occasions at the time that he had set down the same urgent application – Court holding that it is a legal practitioner's professional duty, to present him or herself – punctually - at court - at the set time - for any hearing – and – that the failure to do so without lawful excuse amounted to unprofessional conduct.

Practice – effect of court's order striking an application from the roll - Where a court refuses to condone the non-compliance with the rules that is, generally speaking, the end of that particular process unless the court gives other directions regarding its prosecution or unless the parties otherwise agree. Because there was no adjudication on the merits of the disputes between the parties, a litigant may, now in the ordinary course and using the prescribed form, bring such dispute before the court. However, once the matter is struck from the roll for lack of urgency, it is no longer part of the litigious process and an applicant is left with various options which he can choose from.

Practice - in *Swakopmund Airfield CC v Council of The Municipality of Swakopmund* applied – the Supreme Court formulated the general rule that, once a matter has been struck from the roll, it is no longer before the court and that generally speaking, that is the end of that process. The Supreme Court has however qualified this general rule by also expressly stating that this would only be so, unless the court gives other directions, regarding the further prosecution of such application, or unless the parties otherwise agree - In casu the court did give such other directions, regarding the further prosecution of the application, in its case management orders of 7 and 14 February 2014 - In addition the application was also served on the respondents after it was struck on three prior occasions – In order to blow new life into the struck application, the applicants were obliged to serve the application, which they did – applicants also delivering a further notice of re-instatement on 18 February 2014, in their quest to formalise the renewed hearing of the application - In the circumstances it was then held that the application did serve properly before the court.

Spoliation - Mandament van spolie - Applicants possession of water and electricity supply interfered with – Water and electricity supply capable of being protected through spoliation proceedings - Possessor must prove actual possession and not right to possess - On papers not contested that applicant had uninterrupted possession - Respondent not denying interference with possession - Spoliation order accordingly granted pendent lite.

Summary: The 1st respondent had disconnected the water and electricity supply to Block A and B of the Nurses Home affiliated to the Windhoek Central Hospital – applicants were residing is such quarters – right of occupation disputed and subject to pending eviction proceedings in the High Court – as the applicants had shown their actual possession of water and electricity – and in circumstances were the 1st respondent did not deny interference with such possession in pursuance of a notice to cut off water and electricity to the nurses quarters – spoliation order granted until finalization of pending eviction proceedings.

ORDER

1. The special plea of misjoinder of the 2nd respondent is upheld with costs.

2. The 2nd respondent is to forthwith restore to the applicants their possession and access to the water and electricity, *ante omnia,* at the premises (block A and B of the Nurses Home at Windhoek Central Hospital, Windhoek), pending the finalisation of the eviction proceedings pending between the parties in the High Court of Namibia.

JUDGMENT

GEIER J:

[1] The applicants in this instance, all medical officers, are all residents of Block A and B of the 'Nurses' Home', situate near the Central Hospital in Windhoek.

[2] They claim to be in lawful occupation of these premises.

[3] Their employer, the Ministry of Health and Social Services, claims otherwise and thus has instituted eviction proceedings, against all the applicants, in the High Court, which actions are pending.

[4] While such proceedings are pending, the continuing occupation of the applicants of the Nurses Home causes financial loss to the Ministry, and thus to the Government, who is determined to also renovate these quarters, as they are currently unfit for human habitation. Even the contractor has already been appointed in this regard.

[5] A decision has been taken that funds, which have in the past been utilized to pay for the basic services at these hostels, are to be re-channeled for utilization in a new facility.

[6] In order to provide nurses with alternative accommodation, the Ministry did even have to conclude a lease with TransNamib, to provide for their needs.

[7] It emerges clearly what prejudice and what damages are suffered by the Ministry of Health and Social Services and the Government, (hereinafter referred to as the 1st respondent), due to the alleged unlawful holding over of the nurses home by the applicants.

[8] It comes at no surprise therefore - and given the stand adopted by applicants - where they claim to be in lawful occupation of these premises – that the aforesaid actions for their eviction and claims for damages for holding over, were instituted by the 1st respondent during October 2013.

[9] It was in such circumstances - and where these cases were already pending in the High Court - that the 1st respondent issued a notice - on 24 January 2014 - directed at all residents of the 'Nurses Home', Blocks A and B, informing them that the water and electricity to these blocks will be disconnected on Monday 27 January 2014 and that all residents were thus requested to find alternative accommodation.

[10] Water and electricity was indeed disconnected on 27 January 2014.

[11] Applicants claim to have been in peaceful and undisturbed possession of the supply of electricity and water, which possession was so disturbed unlawfully.

[12] Allow me to add that the 1st respondent in the answering affidavit filed in opposition to this urgent application did not dispute this factual state of affairs.

[13] The main thrust of the 1st respondent's opposition to this application was focused in a number of *in limine* points on the strength of which it sought to achieve the dismissal of this application.

[14] Before dealing with each of these objections it is apposite to mention that this matter came before me for the first time on the 30th of January 2014. On that occasion Mr Mukonda, from the Legal Assistance Centre, failed to appear at the time that the matter had been set down for hearing. Only Mr Ncube, from the Government Attorney, appeared on behalf of the Respondents, on that occasion. Due to the non-appearance of the applicants and their legal practitioner, the matter was struck from the roll with costs.

[15] Consequent upon the filing of a notice of re-instatement, irregularly delivered at the GOSP office of the Law Society[1], on 4 February 2014, the applicants attempted to re-enroll their urgent application for hearing, this time setting it down for 09h00 on 5 February 2014.

[16] Again Mr Mukonda failed to appear on behalf of the applicants at the so designated time – and – due to the non-appearance of both parties on this occasion - the matter was once again struck from the roll on 5 February 2014.

[17] A further notice of re-instatement was then filed on behalf of the applicants, now setting the matter down, for hearing, on 7 February 2014.

[18] Again this notice was irregularly filed at the GOSP office on the previous afternoon, which notice therefore did not come to the Government Attorney's attention. As a result the application was struck from the roll with costs, for a third time, on 7 February 2014, although, on the morning of 7 February 2014, both counsel did appear. Mr Ncube had explained that his client was prejudiced as he had only noted, per chance, that the matter was on the roll earlier that morning, after

[1] I need to add in this regard that, in the context of the urgent application, and in terms of the contract which the Law Society concludes with its members, the legal practitioners, it is impermissible to file any documents, in urgent applications, at the GOSP office.

perusing the Registrar's court roll, circulated by e-mail and that only this explained his appearance on the day.

[19] As the allocation of an urgent application to a Judge, now, in the era of case management, means that such Judge becomes seized with the matter, and, that such Judge so also becomes responsible for the finalisation of all urgent applications allocated to him or her, I then proceeded to case- manage the matter and therefore issued the following further orders on 7 February 2014:

a) The parties' legal practitioners are directed to meet on Monday, the 10th of February 2014, in order to discuss the further conduct of these proceedings.
b) The parties are directed to meet in order to consider whether or not the water and electricity to Block A and B of the Nurses Home at the Windhoek Central Hospital can be restored, on an interim basis, pending the outcome of the eviction proceedings, pending between the parties, in the High Court of Namibia.
c) The matter is postponed to Friday, 14 February 2014 at 09h00, on which occasion the parties' legal practitioners are to appraise the court of the outcome of the negotiations and on the possible further conduct of these proceedings. *(emphasis added)*

[20] On Friday the 14th of February 2014, counsel then informed the court that there had been no positive outcome to their settlement efforts which had so been directed by the court, and that the matter accordingly had to proceed. As a consequence I therefore issued the following further case management orders:

'1. The respondents are directed to file their answering affidavits on or before the close of business of 17 February 2014.

2. The applicants are to reply thereto, if they so choose, on 18 February 2014 at 14h00.

3. The matter is postponed for hearing to Wednesday, 19 February 2014 at 09h00.' *(emphasis added)*

[21] At the hearing so set, the following *in limine* points were raised on behalf of the respondents.: 1. that there was no application pending before the court; 2. The misjoinder of the 2nd respondent; 3. the *locus standi* – authorization - of the first applicant to bring this application on behalf of all the other applicants; 4. Urgency; 5. the applicants' failure to satisfy the requirements for an interim interdict.

[22] There was also a belated issue of non- joinder raised in regard to failure to cite the Ministry of Works. This point was raised in the heads of argument filed on behalf of the respondents for the first time.

[23] The issues of mis- and non- joinder can conveniently be disposed of first.

THE MISJOINDER OF SECOND RESPONDENT

[24] As far as the misjoinder of the 2nd respondent is concerned, that is the Minister of Safety and Security, sued in his capacity as the responsible person, in overall charge of the Namibian Police, the point, as raised, was conceded by Mr Mukonda, as the founding papers contained no allegations pertaining to this respondent, on which any relief could be based.

[25] The concession was properly made, and the point is therefore upheld.

THE NON- JOINDER OF THE MINISTRY OF WORKS

[26] On the issue of the non-joinder of the Minister of Works, it emerged that this submission was only made belatedly in Mr Ncube's heads of argument, which submission was however not founded on any of the allegations, contained in the affidavits, filed on behalf of the respondents, of record. In the absence of any factual foundation placed before the court, Mr Ncube correctly did not pursue this point.

[27] In any event, it emerges from the papers that the notice of 24 January 2014, informing the applicants, that their water and lights would be disconnected - which then also occurred - was issued by an official of the Ministry of Health and Social

Services. It would seem therefore that the officials in that Ministry - and should the court order the reconnection of these services - will be able to comply and give effect to any such order.

THE FIRST APPLICANT'S AUTHORITY/LOCUS STANDI

[28] Also the point, made in regard to the 1st applicant's *locus standi* and his authorisation to bring this application, also, on behalf of all the other 30 applicants, resolved itself during argument.

[29] All the cases relied on by Mr Ncube could be distinguished on the facts as they concern the authority and *locus standi* of natural persons to launch or oppose legal proceedings on behalf of juristic persons. Mr Ncube fairly and correctly conceded that, in this instance, all 31 applicants, being natural persons, properly brought this application jointly – and - that in this regard - Rule 10 of the Rules of High Court, as read with Rule 6(14) - allowed the applicants to jointly bring this application, in one application, in which the right to the relief claimed was based on the same questions of law and facts.

[30] In any event, each applicant has deposed to a supporting affidavit, which reads:

'I have read the founding affidavit of Elias Michael Naruseb. I confirm the contents thereof as it applies to me and I am in full support of the application as I am also aggrieved by the conduct of 1st respondent.' - Then there is a confirmation of the disconnection and a confirmation of the pending action and then it concludes: *'In the premises I accordingly and humbly pray that the order in support whereof Elias Michael Naruseb affidavit is filed, be granted and be applied to me also.'*

[31] If one then cross- references this statement to the 1st applicant statement as contained in the founding affidavit, where he states:

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'I am an adult male assistant administrative officer in the employ of the Ministry of Health and Social Services, residing in block A room 31 at Nurses Home at Windhoek Central Hospital Windhoek ('the premises'). I have full legal capacity to depose to this affidavit and I am the 1st applicant in this application. I depose to this founding affidavit on behalf of myself and the other Applicants, being dully authorised to do so by the other Applicants. In this regard I respectfully draw the above Honourable Court's attention to the confirmatory affidavits of the other applicants filed evenly herewith.'

it appears that this point was ill- conceived and that the concession was correctly made by Mr Ncube, on reflection.

THE EFFECT OF THE STRIKING-OFF

[32] Great reliance was place by Mr Ncube on the point that there was no application before the court. He referred to the Supreme Court decision made in *Swakopmund Airfield CC v Council of The Municipality of Swakopmund* [2]. In that case the Supreme Court had found, in circumstances were the respondents had brought an urgent application for the applicants' eviction - which application was found to be not urgent and which was therefore struck from the roll, and where the same applicants, thereafter launched a further application, in the ordinary course, that such a scenario, did not give rights to a defence of *lis pendens*.

[33] More particularly Strydom AJA who delivered the judgement of the court had this to say:

'[27] I cannot agree with the submissions made by Ms Schneider. It seems to me that the question whether the defence of lis alibi pendens could be raised is not limited to the question whether, some time prior to the present application, there was a more or less similar process but also whether such process was still alive. In this instance a court has pronounced upon the urgent application and by its order the matter was struck from the roll with costs. The order is a complete one and nothing further is required of a respondent in such circumstances, other than to tax its costs and to present such taxed costs to its

[2] 2013 (1) NR 205 (SC)

opponent for payment. The submission by Ms Schneider that the cost order made only relates to wasted costs occasioned by the enrolment of the matter and excludes the costs of the answering affidavits, and the like, is without substance. Where a matter is struck from the roll the respondent would, in my opinion, be entitled to all the costs taxed in regard to the abortive urgent application because there is no guarantee that an applicant in such circumstances would resuscitate the abortive application or take any further steps in regard thereto. Resuscitation in the instance where an urgent application was found to lack urgency seems to me to be only possible where, immediately after the striking of the application for lack of urgency, a further application is made (normally from the bar) by the unsuccessful litigant to pursue the application on the same papers, suitably amended, and the court grants such relief.

[28] In Namibia, as in other divisions in South Africa (see *IL & B Marcow Caterers (Pty) Ltd v Greatermans SA Ltd and Another; Aroma Inn (Pty) Ltd v Hypermarkets (Pty) Ltd and Another* 1981 (4) SA 108 (C) at 110G), and as was also submitted by Ms Schneider, an urgent application generally starts with a prayer for condonation with the non-compliance with the rules of the court, particularly in regard to the form in which the application is brought and the limited time or service whereby notice of the application is given to the other party. Where a court refuses to condone non-compliance with the rules that is, generally speaking, the end of that particular process unless the court gives other directions regarding its prosecution or unless the parties otherwise agree. Because there was no adjudication on the merits of the disputes between the parties, a litigant may, now in the ordinary course and using the prescribed form, bring such dispute before the court. However, once the matter is struck from the roll for lack of urgency, it is no longer part of the litigious process and an applicant is left with various options which he can choose from. He can again use the affidavit evidence which supported the urgent application but he will have to adapt his notice of motion to now comply with the rules in regard to forms and times prescribed for delivery of a notice to oppose, delivery of answering affidavits etc. He could bring a totally new application or he may choose to take no further steps. In this particular instance the applicant chose to bring a new application based on fresh affidavits and, in my opinion, it could do so without risking a plea of lis alibi pendens because the urgent application was struck from the roll and was no longer a pending lis. (See in this regard *Mahlangu and Another v Van Eeden and Another* [2000] 3 All SA 321 (LCC) at 335 para 25 and *Commissioner, South African Revenue Services v Hawker Air Services (Pty) Ltd; Commissioner, South African Revenue Service v Hawker Aviation Partnership and Others*

2006 (4) SA 292 (SCA) ([2006] 2 All SA 565) at para 9.) Another indication that the matter, once struck from the roll, was not alive, is that whatever choice an applicant should make, it would again have to serve that process on the other party.

[29] In the *Mahlangu* matter the court had to decide whether the provisions of the Extension of Security of Tenure Act (ESTA) were applicable to the particular proceedings before the court. Section 16 of that Act applied certain provisions of the Act to proceedings for eviction pending before any court at the time when the Act commenced. The learned judge analysed various cases as well as writers on the Roman Dutch common law, such as Voet and Van Leeuwen. Leaving aside those cases where some legislative Act contains specific provisions in regard to when a particular matter, set out in the Act, was regarded as pending, the case law seems to hinge on two thoughts. In some instances a matter was regarded as pending when the action or process was instituted; in others only after the process was served on the other party. The learned judge in the *Mahlangu* matter pointed out that in application matters there was no formal issuing of the process by the registrar of the court and that in many instances an application was served on the other party even before it was filed with the registrar. After a thorough discussion of the authorities the learned judge concluded that common-law proceedings commenced, and were pending, only after they had been served and not merely after they had been issued. (See the discussion in paras 25 – 40 of the judgment.)

[30] In general, it seems to me that a process will only be pending either when it was issued by the registrar or when it was served on the other party. Once the application was struck from the roll it was no longer before the court and some formal act to again bring it before the court was necessary either by issuing it or serving it. In the present instance it is not necessary for me to decide between the issuing of the process or service thereof because, after the urgent application had been struck from the roll, it was neither again issued nor served and the council brought a new application — which they were entitled to do.

[31] I have therefore come to the conclusion that there was not a lis pending when the council brought the present application and this defence raised by the Airfield Co must be rejected. … ‘.

[34] Although Mr Ncube's point, at first glance, seemed a good one, (the Supreme Court decision, being indicative of the general rule that, once a matter has been struck from the roll, is no longer before the court), it becomes clear that this is only, generally speaking, the end of that process. The Supreme Court in its judgment has qualified this general rule by also expressly stating that this is only so,[3] unless the court gives other directions, regarding the prosecution of such application, or unless the parties otherwise agree.[4]

[35] In this instance the court has given such other directions, regarding the further prosecution of this application, in its orders of 7 and 14 February 2014.

[36] It addition this application was also served on the respondents after it was struck on three prior occasions – that is - it was served on 12 February 2014 - after it had been struck from the roll on 30 January and on 5 and 7 February 2014.

[37] In order to blow new life into the struck application, the applicants were obliged to serve the application, which they did.[5]

[38] In any event the applicants delivered a further notice of re-instatement on 18 February 2014, in their quest to formalise the hearing of the application, which had by then already been set down, by the court's case management order, for the 19th of February 2014.

[39] In such circumstances I cannot uphold the respondents' defence that this application did not properly serve before the court, particularly given the case management considerations mentioned above.

URGENCY

[40] On behalf of the respondents also the aspect of urgency was raised.

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[3] And in circumstances were the court refuses to condone the non-compliance with the rules

[4] See: *Swakopmund Airfield CC v Council of The Municipality of Swakopmund* p211 para [28] at I - J

[5] See : *Swakopmund Airfield CC v Council of The Municipality of Swakopmund* at p213 para [28] at D

[41] Here the point was made that the conduct of the applicants, on its own, was sufficient for the court, to refuse to grant, to the applicants, the indulgence, they were seeking.

[42] It was submitted that the matter could no longer be urgent in circumstances where the applicants' counsel had failed to present himself at court, punctually, on two occasions, at the time set, for the hearing of the matter. This remissness, so it was argued, should be fatal to their case on urgency – and - in any event - Mr Mukonda's remissness - should be attributed to his clients.

[43] I can immediately state that it is a legal practitioner's professional duty, to present him or herself – punctually - at court - at the set time - for any hearing[6] – and - that Mr Mukonda's unprofessional conduct, in this matter, opened up this avenue for attack, which was thus not without merit.

[44] It should however be mentioned that Mr Mukonda has apologised, since, to the court and that he has also tried to explain himself, in a letter dated 6 February 2014, as well as in an affidavit, filed in support of the latest attempt at re-instatement.

[45] Ultimately I am persuaded 'not to visit the sins of their legal practitioner on the applicants', because of the fact that the applicants have demonstrated- and have continued to demonstrate their resolve, throughout, to have this matter heard on an urgent basis in a situation where they have now suffered the significant inconvenience of having to live without water and electricity since 27 January 2014 and were they almost immediately attempted to approach the court with promptitude by setting the matter down for hearing for the first time on 30 January 2014.

[46] Both parties accept that spoliation proceedings, due to their nature, are normally inherently urgent.

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[6] and the failure to do so without lawful excuse will amount to unprofessional conduct

[47] Regardless of this factor I am satisfied that this matter could always have been heard on an urgent basis particularly due to the problems experienced by the applicants because of the disconnection of water and light which are described in the founding papers as follows:

'Due to the disconnection of the water and electricity, we are experiencing the following problems: 1. We cannot bath, 2. We cannot study. 3. Our food in our fridges is getting rotten. 4. We cannot cook and we do not have enough means to eat in restaurants. 5. Our toilets cannot be used as they were designed to flush and they cannot flush. 6. There is an unbearable odour of rotten food and human waste on the premises. 7. There is a risk of infection due to the unhygienic condition. 8. It is too dark to safely use the corridors at night or by using the stairs. As a result of the aforesaid unlawful disconnection of the water and electricity by the 1st Respondent, our right to dignity and not to be subjected to cruel and inhuman and degrading treatment has been violated and continues to be violated by the 1st Respondents in conflict with Article 8 of the Constitution of Namibia.'

[48] In all the circumstances of this matter I am ultimately also not persuaded that Mr Mukonda's conduct is, or was such, that the limit has been reached where a litigant can no longer escape the results of his attorney's lack of diligence or unprofessionalism.[7]

[49] I accordingly deem it proper to exercise my discretion in favour of the applicants in that I am prepared to condone the various none-compliances with the rules and forms of this court and to hear this matter on an urgent basis.

SHOULD SPOLIATORY RELIEF BE GRANTED

[50] The applicants, in the main, seek spoliatory relief in that they seek the restoration of water and light, *ante omnia,* to Blocks A and B of the Nurses Home attached to the Windhoek Central Hospital.

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[7]Compare for instance: *Namhila v Johannes* (I3301/2011) [2013] NAHCMD 50 (28January2013) reported on the SAFLII web-site at http://www.saflii.org/na/cases/NAHCMD/2013/50.html [94] to [101]

[51] This court, in a number of decisions, has held, that water and electricity supply is capable of protection, through spoliation proceedings.[8]

[52] To obtain such protection the applicants had to show - and this is not contested by the respondents - that they had the continuous and undisturbed supply of water and electricity - which the 1st Respondent unlawfully interfered with - by causing same to be disconnected on 27 January 2014.

[53] None of the limited defences, available to a respondent, in such circumstances, was raised on the part of the respondents, such as that the applicants did not enjoy the supply of water and electricity at the time of the alleged spoliation or that it was someone else that committed the complained of act of spoliation.

[54] The closest that the 1st respondent gets to a recognised defence, ie. that restoration of the status quo *ante* is impossible, is when Mr Ndishishi states that the 1st respondent has no money to pay for the applicants' illegal occupation of the premises. In the same breath he however states that the financial resources, which, in the past, have been used to pay for water and electricity at the nurses quarters, shall henceforth be utilised for a new facility.

[55] This is a far cry from the situation recognised in law in which the defence of impossibility of the restoration of the status *ante omnia* would be recognised, such as, for instance, if the object, that is to be restored, is incapable of restoration, because of its destruction, for instance.

[56] It should have emerged that the applicants have made out a case for the spoliatory relief sought, on an urgent basis.

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[8] *Ruch v Van As* 1996 NR 345 (HC) at pages 351 to 353 where the court thoroughly analysed the available authorities at the time, and see *Kock t/a Ndhovu Safari Lodge v Walter t/a Mahangu Safari Lodge and Others* 2011 (1) NR 10 (SC) were the court confirmed that the *mandament van spolie* also operated in regard to incorporeal things and was available to quasi-possessors, or where a co-possessor took over exclusive possession

THE REQUIREMENTS FOR AN INTERIM INTERDICT

[57] Mr Ncube has also argued that the requirements for interdictory relief have not been met.

[58] In this regard it needs to be stated immediately that the requirements for the restoration of the status quo, *ante omnia,* have been met, which should- and do found the applied for spoliatory relief. In so far as any resultant order will also direct the 1st respondent to restore water and electricity to the applicants - at least until the finalisation of the pending actions - and in so far that such relief may also be regarded as being interdictory in nature or effect - I find that the requirements for an interim interdict have been satisfied, in this instance.

[59] The applicants can show a clear right to the claimed spoliatory relief and have shown a reasonable apprehension of harm, which materialised when water and electricity was disconnected on 27 January 2014. Clearly also the balance of convenience favours the maintaining of the status *quo, ante omnia - pendente lite* - and also- clearly - the applicants have no other adequate alternative and satisfactory remedy to restore the position *ante omnia*.

NO CASE MADE OUT FOR THE OTHER RELIEF SOUGHT

[60] Finally, it has not emerged from the papers that the applicants were able to make out a case for the other relief applied for and as reflected in the notice of motion.

[61] In the result I make the following orders:

(a) The special plea of misjoinder of the 2nd respondent is upheld with costs.

(b) The 1st respondent is to, forthwith, restore to the applicants their possession and access to water and electricity, *ante omnia,* at the premises (Block A and B of the Nurses Home at Windhoek Central Hospital, Windhoek), pending the

finalisation of the eviction proceedings pending between the parties in the High Court of Namibia.

H GEIER

Judge

APPEARANCES

APPLICANTS:	R Mukonda Legal Assistance Centre, Windhoek
RESPONDENTS:	J Ncube Office of the Government Attorney, Windhoek

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