

REPUBLIC OF NAMIBIA

NOT REPORTABLE

HIGH COURT OF NAMIBIA



MAIN DIVISION, WINDHOEK

JUDGMENT

Case no: A 57/2014

In the matter between:

EVA JANSEN

APPLICANT

and

KATHRIN SCHAEFER-STIEGE

1<sup>ST</sup> RESPONDENT

OKAKAMBE RIDING CENTRE CC

(IN LIQUIDATION)

2<sup>ND</sup> RESPONDENT

DAVID JOHN BRUNI N.O.

(IN HIS OFFICIAL CAPACITY AS CO-LIQUIDATOR)

3<sup>RD</sup> RESPONDENT

IAN ROBERT MCLAREN N.O.

(IN HIS OFFICIAL CAPACITY AS CO-LIQUIDATOR)

4<sup>TH</sup> RESPONDENT

THE MASTER OF THE HIGH COURT OF NAMIBIA

5<sup>TH</sup> RESPONDENT

Neutral citation: Jansen v Schaefer-Stiege (A 57/2014) [2014] NAHCMD 120 (02 April 2014)

Coram: MILLER AJ

Heard: 20 March 2014

Delivered: 02 April 2014

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ORDER

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That the applicant's non-compliance with the forms and service as provided for by the rules of this Honourable Court and service of a fax copy of this application on the first respondent and hearing of the application on a urgent basis as is envisaged in Rule 6 (12) of the High Court Rules is condoned. That the third and fourth respondents are ordered and directed to forthwith appoint a suitable and competent person, other than the first respondent as manager of the third respondent, pending the finalization of these proceedings. That the parties are to attend a case management conference on 10 April 2014 at 15h30 in order to determine a return date.

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JUDGMENT

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MILLER AJ : [1] The applicant and the first respondent are the only members of a close corporation styled Okakambe Riding Centre CC.

[2] Each holds a 50% membership interest.

[3] The business of the close corporation consists of horse riding services, stable services, horse training and care and tourism.

[4] The business came to struggle financially and required financial assistance on a regular basis to stay afloat.

[5] As a result thereof it was resolved to wind up the affairs of the close corporation. Following a resolution to that effect, and lodging it with the Registrar of Close Corporations, the other formalities were completed.

[6] On 5 December 2013, the fifth respondent appointed the third and the fourth respondent.

[7] Shortly after their appointment the third and fourth respondents met with the creditors.

[8] The applicant alleges that at that meeting the liquidators appointed the first respondent to act as their agent to manage the affairs of the second respondent. This is apparent from a letter the liquidators addressed to the first respondent dated 30 January 2014 which reads as follows:

‘As discussed at a meeting in Swakopmund on the 29<sup>th</sup> of January 2014 with Beatrix Greyvensten, Jan Olivier and later yourself. The liquidators hereby appoint you as their sole agent for Okakambe Riding Centre CC until an amicable solution to the sale of the assets can be reached. You are hereby authorized to carry on the business of the CC in the normal course and to account to the liquidators for all income and expenditure incurred during this period. You are also authorized to terminate the services of Mr. Peter Kay and Laina Sheehama Shilongo with effect 31<sup>st</sup> January 2014.

The new bank account details are as follows:

Account name: Okakambe Riding Centre CC – in liquidation  
Bank: Nedbank  
Branch: H.....  
Account no: 1.....

[9] The stance adopted by the first respondent on this issue is that she did not accept her appointment. She states that she first required further details regarding her duties and so forth from the liquidators which she never received.

[10] She attaches a letter dated 04 February 2014 written by her legal practitioner, Ms. Greyvenstein.

[11] The relevant portion thereof reads as follows:

‘In respect of your letter dated 30 January 2014, we hold instructions to inform you that our client is willing to assist you with the carrying on of the business of Okakambe Riding Centre CC as requested in your letter on the following conditions:

1. That you compensate our client for the work required in carrying out your mandate.
2. That you inform our client in writing of all the duties and authorities.’

[12] What is apparent apart from the formal exchange of correspondence, however, is that the first respondent at times for instance January 2014 managed the business of the first respondent. She says that she did so because there was no one else present to do so.

[13] It is common cause that the first respondent has now started a business similar to that of the second respondent, which trades under the name Okakambe Stables.

[14] In a letter to the customers, presumably of the second respondent, which reads as follows, she says

‘Good day,

Please find the new horse riding rates for 2014. Please note that we have changed our name from Okakambe Riding Centre CC to Okakambe Stables. We do free pickups at Namib I in centre (sic) of town and can accommodate groups of up to five people/riders at a time. Hope to hear from you soon.’

[15] The first respondent explains that this letter was written in error. That can not be so on any score. If what the first respondent wanted to convey was that she had started a new business separate and distinct from that of the second respondent, she needed to do so no more than simply say so. Instead the letter reads that the second respondent was carrying on its existing business but under a new name.

[16] It was in my view an improper attempt to lure customers to her new business.

[17] Despite the fact that the liquidators was informed of this and requested to intervene they did nothing.

[18] In the result this Court was approached to grant the following relief:

‘1. Condoning the applicant’s non-compliance with the forms and service as provided for by the Rules of the above Honourable Court, condoning service of a fax copy of this application on the first respondent and hearing this application as one of urgency as contemplated by Rule 6(12) of the rules of the above Honourable Court.

2. That a rule nisi be issued calling upon the first and second respondents to show cause (if any) on a date and time to be allocated by the Registrar of the above Honourable Court, why the following order should not be made final :

2.1. Ordering and directing the first respondent to forthwith cease and desist from any manner whatsoever advertising, holding out and/or soliciting from the public any business conducted by her as manager of Okakambe Riding Centre CC (in liquidation), as being the business of herself, in her own personal capacity, or any business, other than business of Okakambe Riding Centre CC (In Liquidation).

2.2. Interdicting and restraining the first respondent from in any matter whatsoever issuing any invoice in her capacity as manager of Okakambe Riding Centre CC and/or connected to the business of Okakambe Riding Centre CC (in liquidation) either in her own name, or, any name, other than bank account: Okakambe Riding Centre CC (in liquidation), Acc. No: 1..... held at Nedbank, H.... branch; code- 4.....

2.3 Interdicting and restraining the first respondent from in any manner whatsoever, receiving and/or depositing any funds received by her in her capacity as manager of Okakambe Riding Centre CC (in liquidation), in any account, other than bank account: Okakambe Riding Centre CC (in liquidation), Acc. No: 1..... held at Nedbank, H.... branch; code- 4.....

2.4 Interdicting and restraining the first respondent from, in any manner whatsoever, paying and/or disbursing, and/or in any other manner whatsoever, dissipate any funds received by the first respondent, in her capacity as the manager of Okakambe Riding Centre CC (in liquidation).

2.5. Ordering and directing the third and fourth respondents to forthwith, but not later than 24 hours from date on which this order is confirmed, on the return date of orders 2.1 to 2.4 above:

2.5.1. to terminate the appointment of the first respondent as manager of Okakambe Riding CC (in liquidation).

2.5.2. appoint Bronwin Ockhuys and/or any other suitable person, as manage

2.6. Ordering and directing the first respondent to pay the costs of this application on a scale as between attorney and client, such to include the costs of one instructing and one instructed counsel.

3. That orders 2.1 to 2.4 above shall operate as an interim interdict, with immediate effect, pending the return date of this application.’

[19] The first respondent opposes the relief claimed and seeks the dismissal of the action.

[20] As is apparent from the relief claimed what I am requested to grant is interim relief. As matters now stand neither the applicant nor the first respondent wants the latter to manage the affairs of the second respondent. That situation will be to the detriment of the creditors of the second respondent and it is imperative that the liquidators appoint someone else in the interim, should they wish to continue with the business of the second respondent for the time being.

[21] I will therefore issue an order that the third and the fourth respondents appoint such a person. That order will make the relief claimed in paragraphs 2.1 to 2.4 of the prayers redundant.

[22] I will therefore only grant relief in terms of prayer 2.5 albeit in an amended form.

[23] As far as costs are concerned those can stand over for determination on the return date.

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

- 1) That the applicant’s non-compliance with the forms and service as provided for by the rules of this Honourable Court and service of a fax copy of this application on the first respondent and hearing of the application on a urgent basis as is envisaged in Rule 6 (12) of the High Court Rules is condoned.
- 2) That the third and fourth respondents are ordered and directed to forthwith appoint a suitable and competent person, other than the first respondent as manager of the third respondent, pending the finalization of these proceedings.

- 3) That the parties are to attend a case management conference on 10 April 2014 at 15h30 in order to determine a return date.

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P J MILLER  
Judge

APPEARANCES

APPLICANT: J SCHICKERLING (with him SJ Jacobs)  
Instructed by Nederlof Incorporated, Windhoek

FIRST RESPONDENT: N BASSINGTHWAIGHTE  
Instructed by Lorentz-Angula Incorporated,  
Windhoek



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