



HIGH COURT OF NAMIBIA MAIN DIVISION, WINDHOEK

RULING

Case no: I 3249/2014

In the matter between:

**WILDLIFE ASSIGNMENT INTERNATIONAL (PTY) LTD**

**PLAINTIFF**

and

**HERBERT WOLFGANG HENLE t/a NAMIB GAME SERVICES**

**DEFENDANT**

**Neutral citation:** *Wildlife Assignment International (Pty) Ltd v Herbert Wolfgang Henle T/A Namib Game Services* (I 3249/2014) [2017] NAHCMD 250 (1 September 2017)

**Coram:** MILLER AJ

**Heard:** 29 AUGUST 2017

**Delivered:** 1 SEPTEMBER 2017

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**ORDER**

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Having heard **Mr T Barnard** for the applicants and **Mr P Barnard** for the respondents on 29 August 2017, and having considered the documents filed of record –

**IT IS ORDERED THAT –**

1. I grant prayer 1 of the application.
2. The respondent is ordered to pay the applicant's costs which will include the costs of one instructed and one instructing counsel.
3. There shall be a status hearing on 23 October 2017 at 09h00.

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**RULING**

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MILLER AJ:

[1] I have before me an application brought by the defendant in the main action to stay the proceedings presently before me, until the finalization of an appeal presently pending before the Supreme Court.

[2] The matter is opposed on the basis that the ruling against which the appeal was noted is of an interlocutory nature. Thus, so the argument runs, the defendant required leave to appeal which admittedly the defendant did not obtain. Instead a Notice to Appeal was filed directly with the Supreme Court. On the strength of that it is argued that there is no appeal since the Notice of Appeal is a nullity.

[3] As matters stand there is an appeal pending in the Supreme Court. The Notice of Appeal has not been struck down, nor is there any proceeding on the part of the plaintiff before me to seek an order striking it down, if indeed such a remedy is available.

[4] At the heart of the matter is the question whether the High Court has any jurisdiction to determine one way or the other, whether an appeal to the Supreme Court was properly brought before that court as required by the relevant legislation and Rules. That question in my view falls exclusively within the jurisdiction of the Supreme Court which is the Court currently seized with the matter.

[5] It is not for this court to express itself upon or adjudicate the matter. If there is an argument that the appeal was not properly prosecuted because no leave was obtained, the Supreme Court is the forum before which that issue should be debated and not the High Court.

[6] This is not a case which warrants a cost order on a punitive scale as requested by the applicant.

[7] The following orders are therefore issued:

1. I grant prayer 1 of the application.
2. The respondent is ordered to pay the applicant's costs which will include the costs of one instructed and one instructing counsel.
3. There shall be a status hearing on 23 October 2017 at 09h00.

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K MILLER  
Acting Judge

## APPEARANCES

### PLAINTIFFS/RESPONDENTS:

Mr T Barnard

Instructed by Behrens & Pfeifer, Windhoek

### DEFENDANTS/APPLICANTS:

Mr P Barnard

Instructed by Du Pisani Legal Practitioners,  
Windhoek