



**HIGH COURT OF NAMIBIA MAIN DIVISION, WINDHOEK  
RULING ON COSTS**

Case No: I 2954/2015

In the matter between:

**BENHARDT LAZARUS**

**PLAINTIFF**

and

**THE GOVERNMENT OF THE REPUBLIC OF NAMIBIA  
(MINISTRY OF SAFETY AND SECURITY)**

**DEFENDANT**

**Neutral citation:** *Lazarus v The Government of the Republic of Namibia (Ministry of Safety and Security)* (I 3954/2015) [2017] NAHCMD 348 (1 December 2017)

**CORAM: MASUKU J**

Heard: 04, and 24 October 2017

Order issued: 22 November 2017

Reasons Delivered: 1 December 2017

**Flynote:** Rules of Court – Rule 32 (9) and (10) – applicability to applications for extension of time or condonation. Costs – the rules relating to costs – considerations

for granting punitive costs – circumstances in which public officials may be personally called upon to pay costs of proceedings.

**Summary:** Two police officers, in the defendant's employ, were found by the court to have abused their power in repeatedly arresting, shooting at the plaintiff and for illegally impounding his vehicle after he reported a case of burglary to his bar in Katutura to the police. The defendant admitted liability for the officers' conduct. At the conclusion of the case, the court raised two issues and called upon the parties, including the officers implicated, to show cause why they should not personally pay the costs and why the costs should not be levied against them at the attorney and client scale.

The officers became aware of the court order, but did not file any papers showing cause, as required of them, neither did the defendant. The only party that made submissions was the plaintiff, who took the position that the case was a proper one to order the officers to personally pay the costs and also for attorney and client costs to be ordered.

*Held* – where a party has not complied with an order of court, they may not seek the agreement of the opponent to extend the time period or condone the non-compliance in a letter. The proper course in that regard, subject to rule 32 (9) and (10), is to file an application either for extension of time or for condonation, as the case may be.

*Held further* – that the granting of costs lies within the court's discretion, which discretion is to be exercised fairly and reasonably and not whimsically, capriciously or irrationally.

*Held* – that punitive costs are not lightly granted, save in exceptional circumstances, e.g. where there is bad faith, fraud, recklessness, 'cowboyish' behaviour or other unsavoury or unbecoming conduct on the part of the party sought to be mulcted with punitive costs.

*Held further* – that where public officials act in bad faith during the exercise of their official functions, they may, in appropriate cases, be ordered to personally pay the costs attendant to the cases, where they have fallen departed from the paths of virtue expected of their offices.

The court found that on the facts, the officers had behaved in a depraved manner and had abused their official powers in a way that violated the plaintiff's human rights and freedoms. For that reason, the court found that a punitive costs order was called

for. The court also found that the officers' behaviour was in bad faith, suggesting that it was proper, in the circumstances, to order them to personally pay the costs of the action.

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## ORDER

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1. Messrs. Freddie Nghilinganye and Sackey Kokule are hereby ordered jointly and severally, the one paying and the other being absolved, in their personal capacities, to pay the costs occasioned to the plaintiff in prosecuting the main action proceedings.
2. The costs referred to in paragraph 1 above are to be levied on the scale between attorney and client.
3. A copy of this judgment is to be served in terms of the rules of court on Officers Mr. Freddie Nghilinganye and Mr. Sackey Kokule by the Office of the Government Attorney through the office of the Deputy-Sheriff, within 10 days from the date hereof.
4. The Office of the Government Attorney is directed to file the Deputy-Sheriff's returns of service evidencing compliance with paragraph 3 hereof within ten (10) days of service of the judgment and order on Messrs. Nghilinganye and Kokule.
5. There is no order as to costs in respect to these proceedings.
6. The costs component of this matter is regarded as finalised.
7. The matter is regarded as finalised and is removed from the roll.

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## RULING

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MASUKU J:

### Introduction

[1] In its judgment dated 30 August 2017, (the main judgment), this court ordered police officers, Messrs. Freddie Nghilinganye and Sackey Kokule, to show cause on

or before 27 September 2017, (i) why costs of the main action should not be levied on the punitive scale; and (ii) why they should not, jointly and severally, the one paying and the other to be absolved, be ordered personally pay the costs of the said action.

[2] For a proper understanding of this ruling, it is useful and recommended that the reader acquaints her or himself with the main judgment.

### Issues

[3] Arising for determination in this ruling, are two questions. The first is whether, on the conspectus of the findings and conclusions of the court in the main judgment, the costs should not be levied on the attorney and client scale. Secondly, it is whether there are any reasons why Messrs. Nghilinganye and Kokule's should not personally, jointly and severally, the one paying and the other to be absolved, be liable to pay the costs of the main proceedings.

### Notice of the proceedings to Messrs Freddie Nghilinganye and Sackey Kokule

[4] It is a fact that Messrs. Freddie Nghilinganye and Sackey Kokule were not joined to the main action proceedings. In the main judgment, however, considering the critical and central role the said officers played in the plaintiff's complaint, the Office of the Government Attorney was ordered by the court to bring these proceedings to the attention of Messrs. Freddie Nghilinganye and Sackey Kokule in terms of the rules of Court. This is in keeping with the established principle of *audi alteram*<sup>1</sup>.

[5] In response, the Office of the Government Attorney delivered two returns of service, dated 05 September 2017, evidencing notification of these proceedings on Messrs. Freddie Nghilinganye and Sackey Kokule by the Deputy-Sheriff.

[6] In a manner consistent with a person possessing knowledge of the nature and

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<sup>1</sup> *Black Sash Trust v Minister of Social Development and Others* (Freedom Under Law NPC Intervening) (CCT48/17) [2017] ZACC 20; 2017 (9) BLLR 1089 (CC) (15 June 2017), at para [4].

import of these proceedings<sup>2</sup>, Mr. Sackey Kokule engaged Kadhila Amoomo Legal Practitioners, who on 26 September 2017, delivered a notice of representation “in re cost order” on his behalf. Service of the proceedings on Mr. Freddie Nghilinganye, by the Deputy-Sheriff was, however, not satisfactory. The court’s concern in this regard was however dispelled by Mr. Ngula’s representation to the effect that, he had personally spoken to Mr. Kokule about this matter and that the latter was aware of the proceedings and what they were required to do. True to form, Messrs. Siyomunji Law Chambers, eventually filed a notice of representation on behalf of Officer Nghilinganye. Consequently, I am satisfied that both Messrs Freddie Nghilinganye and Sackey Kokule had notice of these proceedings.

[7] On 4 October 2017, to which the matter had been postponed for a ruling, Mr. Amoomo did not appear and no reasons for his non-appearance were proffered. There was no appearance on behalf of Mr. Nghilinganye either. For that reason, no submissions were made on behalf of the parties on the question of costs. Mr. Amoomo, for his part had filed a letter dated 26 September 2017, indicating that he required more time to engage his client’s adversaries in terms of rule 32 (9) and (10) in respect of an application he wished to bring to court for more time, to take full instructions from his client.

[8] The relevant parts of his letter read as follows:

‘BENHARDT LAZARUS // GOVERNMENT OF THE REPUBLIC OF NAMIBIA – PERSONAL COST ORDERS IN RESPECT OF MR. S. KOKULE – NOTICE ITO 32(9) & (10)

The above and their (sic) judgment of the Honourable Court delivered on 30<sup>th</sup> August 2017 has reference.

We act herein for and on behalf of our client Mr. S. Kokule, under whose instructions we address the following rule 32(9) and (10) notice respectively.

Today we received instructions from Mr. S. Kokule to act on his behalf so as to attend to the order made by his Lordship... Because of the short notice herein, we anticipate that we would not file substantive affidavit on or before the 27<sup>th</sup> September 2017, which is tomorrow respectively (sic)”.

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<sup>2</sup> *Witvlei Meat (Pty) Ltd and Others v Disciplinary Committee for Legal Practitioners and Others* (A 212/2011) [2012] NAHC 32 (20 February 2012).

We therefore intended on making an application for an extension of time so as to enable us to obtain proper instructions, obtain the pleadings and all other notices filed and to obtain the record of the proceedings herein.

Kindly indicate on or before 12H00 on the 27<sup>th</sup> September 2017 whether you will oppose such request for an extension...'

[9] I need to mention, in relation to this letter, that where a party has fallen foul of complying with a court order or direction to do a certain act by a certain time, that party may not seek to extend the time period stipulated by the court order by means of writing a letter to the opponent and copying same to the Judge's Chamber and hope to get appropriate relief by so doing. The provisions of rule 55 are very clear regarding what such a party should do and when.

[10] This part is subject to the provisions of rule 32 (9) and (10) and Mr. Amoomo was correct in seeking an amicable resolution of the matter relating to the extension of time or condonation. To the extent, however, that Mr. Amoomo sought to have the time period extended by the letter is totally out of order and I accordingly, had to proceed on the basis that there had been no compliance with the court order in question as no application was filed, neither for the extension of time nor for condonation of the non-compliance within the period stipulated in the court order or at any time thereafter.

[11] Before I could deal with the matter, however, I realised that the intention of the court may not have been accurately conveyed in the court order. In this regard, it would appear that the officers in question had been asked to show cause, as stated earlier and the defendant and the plaintiff appear to have been excluded from making any submissions regarding the issues arising. Realising that if the court was not persuaded to order the said officers to personally pay the costs, then these costs would inevitably have to be paid by the defendant, their employer.

[12] On 24 October 2017, I accordingly called the parties' representatives in chambers and requested them, if they so wished, to deal with the issue of the scale of the costs and with the issue whether or not the officers should be personally saddled with the costs burden. I then granted all the parties an opportunity to file heads of argument in that regard by 10 November 2017. I accordingly postponed the

matter to 22 November 2017 for a ruling on the issues raised as captured above.

[13] It is disheartening to mention that none of the parties, including the defendant, chose to utilise this further opportunity extended to them. Only Ms. Shikale did so. She filed comprehensive heads of argument for which the court is greatly indebted and it is in order to commend her for her assiduousness in that regard. It is always helpful and appreciated for parties, when called upon, to assist the court in carrying out its onerous duties and obligations in dispensing and rendering justice to whom it is due.

[14] In the present case, it then follows, as night follows day, that no submissions were made on behalf of the other parties. At the court's disposal were only Ms. Shikale's submissions, which, when summed up, took the position that this was an appropriate matter in which to grant costs on the punitive scale and that having regard to the officers' behaviour, it was also condign to order them to personally pay the costs on the aforesaid scale. There is accordingly no opposing or dissenting view in this regard.

[15] As a result, there is no explanation tendered nor is there any sign of penitence exhibited by or on behalf of the two officers, which could serve to persuade the court to exercise its discretion on the issue of costs in a manner that may serve their interests. In circumstances such as these, where the officers have decided to spurn the court's efforts to hear from them, leads the court to no other conclusion than that there is nothing to be said in their favour. The axe must cut where it has fallen, with no reprieve.

[16] Having had regard to the heads of argument filed by Ms. Shikale and the general overview of the matter, and particularly considering the attendant behaviour of the said officers as discussed in the main judgment, I formed the view that this is an appropriate matter in which to order costs on the punitive scale. I further adopted the view that the said officers should be held personally liable therefor. Consequently, on 22 November 2017, after much rumination, I granted the following order:

1. The costs of the action are granted on the scale between attorney and client.

2. That Messrs. Freddie Nghilinganye and Sackey Kokule are to personally bear the costs referred to in 1 above.
3. That reasons for the above order shall be delivered on 30 November 2017 at 10h00.
4. That the matter is removed from the roll and is regarded as finalised.'

[17] I was, however, unable to deliver the reasons as indicated in the above order on 30 November 2017. This was because there is some authority that Ms. Shikale referred to in her heads of argument, which was not properly and fully cited. I asked Ms. Shikale to assist, which consequently saw the deadline for the delivery of the reasons not being met. Notwithstanding the delay of one day, I deliver the reasons for the order granted on 22 November 2017 hereunder.

### The law

*In what circumstances are attorney and client costs granted? Is the instant case an ideal one?*

[18] One of the cardinal rules relating to costs is that the granting of costs lies pre-eminently within the discretion of the court.<sup>3</sup> As with all other cases where discretion is to be exercised, it must be not be exercised capriciously or whimsically but judicially and judiciously as well.

[19] The learned author, Cilliers (*supra*), states the following regarding the granting of costs on the attorney and client scale:<sup>4</sup>

'The ordinary rule is that the successful party is awarded costs as between party and party. An award of attorney and client costs is not lightly granted by the court: the court leans against awarding attorney and client costs, and will grant such costs only on "rare" occasions. It is clear that normally, the court does not order a litigant to pay the costs of another litigant on the basis of attorney and client unless some special grounds are present.'

[20] In his further treatise on this subject, the learned author lists the following circumstances as those that may justify the court awarding costs on the punitive scale, namely, – (a) instituting vexatious and frivolous proceedings; (b) dishonesty or fraud of the litigant; (c) blameworthy conduct of the said litigant; (d) reckless or

<sup>3</sup> A.C. Cilliers, *Law of costs*, 3<sup>rd</sup> edition, LexisNexis, Durban, 1997 at p.2-3 para 2.01.

<sup>4</sup> *Ibid* at para 4.09.



malicious proceedings; a deplorable attitude or conduct of the litigant towards the court. The list is not exhaustive, however, as it may also include instances where that party for instance, is guilty of gross failure to place essential facts before the court for consideration.

[21] In her submissions, Ms. Shikale, helpfully referred the court to the case of *Rudman v Maquassi Hills Local Municipality and Others*,<sup>5</sup> which deals with the subject. In that case, Steenkamp J quotes with approval the sentiments expressed in the case of *McPherson v Tuewen and Another*,<sup>6</sup> where, the court, per Kgomo J, (as he then was), dealt with the question of punitive costs as follows at para 57:

‘For a party to be saddled with an order for costs on an attorney and client scale, such party would most probably have acted or conducted itself *mala fide* . . . Normally, such a party would have been capricious, brazen and/or cowboyish in its approach to the litigious process and not have cared what the consequences of its acts or actions would be on the process and/or the other side.’

[22] From a reading of the case, it would appear that it was dealing with the behaviour of legal practitioners in a litigious matter before court which was regarded by the court as less than satisfactory, leading the court to make such scathing observations. The standard which applies to attorney and client costs does not only relate to cases of improper behaviour of legal practitioners, but may be applied, in proper cases, to other persons who behave in a despicable manner that warrants some censure which is adjudged by the court to be fitting to be to appropriately expressed via the medium of an adverse punitive costs order.

[23] The question that follows is whether there is anything in the conduct of the officers in question in this matter, that can be properly regarded as capricious, *mala fide*, brazen and/or cowboyish, in their interactions and dealings with the plaintiff, to borrow from the words of Mr. Justice Kgomo. My answer is a resounding yes! In support of this conclusion, I find it fitting to quote *in extenso*, some paragraphs of the court’s main judgment that appear to have a bearing on the issue in question.

[24] In addressing the behaviour of the two officers in dealing with the plaintiff, the

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<sup>5</sup> *Rudman v Maquassi Hills Local Municipality and Others* (J1472/13) [2013] ZALCJHB 166; (2014) 36 ILJ 765 (LC) (30 July 2013).

<sup>6</sup> (2009/27002) [2012] ZAGPJHC 18 (22 February 2012).

court expressed itself in the following terms in the following paragraphs:

[51] ... the defendant (*sic*) was arrested on three separate occasions by the same police officers. In each instance, there was no warrant of arrest; no explanation for the arrest and he was dealt with openly in the presence of customers, neighbours and his members of staff. He was treated like a miscreant. His position in this case, as a complainant did not warrant the treatment meted to him without any explanation, particularly a reasonable one.

[52] During each of these arrests, he was handcuffed and placed in smelly and filthy cells with no sleeping material. The food, he testified, was very bad and the other inmates abused him during his sojourn there. Furthermore, his house and property were subjected to an illegal search, without a warrant. This is a violation of Art. 13. There was no respect, it would seem for him and his family and property during the search as he testified that the place was left in disarray. Furthermore, his vehicle was also searched and later impounded illegally for a period of 30 weeks.

[53] As if that was not enough, the plaintiff was repeatedly shot at with a firearm on one occasion when he had had enough of the persistent illegal arrest by the police. This shooting was a clear disregard for his right to life which is protected in Art.6 of the Constitution. This must have been a very traumatic experience for a person who it turns out had committed no offence after all. His offence, if it was, was to report a break-in to his bar. To add salt to injury, when he decided to take legal action against the police for the abuse to which he was subjected, he was punished therefor by a further arrest. This is particularly reviling to a person of sober tastes and sensibilities, particularly when this is done by people who are expected to be the paragon of virtue and law abiding. . .

[56] The plaintiff's rights enshrined in Arts. 6 (protection of the right to life); Art. 7 (protection of liberty), Art. 8 – (respect for human dignity); Art. 11 – (arbitrary arrest and detention); Art.12 (right to a fair trial, particularly the presumption of innocence); Art. 13 – (right to privacy) and Art. 16 (the right to property), were violated by his captors at will. An award that exhibits the high value and premium attached to these rights must, in my view be handed down as an example, not only to the implicated police officers but also to other officers who may be like-minded. The message must be driven home emphatically that this type of criminal behaviour has no place in a democratic State.

...

[75] I am of the considered view that it would be irresponsible on the part of the court to allow the officers in question to go home scot free, particularly in the light of their iniquitous actions. In this regard, it would appear to me, considering their depraved conduct, that it is proper and called for on the part of the court call upon the officers to show cause (i) why

costs on the punitive scale should not be ordered in this case, considering that the issue of costs is one within the discretion of the court; and (ii) why the said officers should not personally bear the costs' order. It would be unconscionable, in my view, to allow tax-payers to foot the entire bill of the officers' ego trip.'

[25] It would appear to me that from whatever perspective one views the officers' conduct in this matter as described above, particularly in the absence of any explanation or submission from them, despite being afforded an opportunity by the court to influence the decision on costs, and which they spurned, I am of the view that all the epithets stated by court in the *Lushaba* case, and more, are apparent. In particular, no other conclusion can be reached than that the officers behaved in a 'cowboyish' manner, which this court likened to 'Sheriffs of doom in the Wild West' in the main judgment.

[26] In the circumstances, and I repeat, in the absence of any submissions by the defendant and the implicated officers, in particular, that I am of the considered view that there are ample grounds, discernible from the main judgment, for mulcting the said officers with costs on a punitive scale.

[27] It was for the foregoing reasons that I ordered the costs, harsh as they are, to be paid by the police officers in question on this enhanced scale.

#### *Grant of costs personally against representatives*

[28] In *Black Sash Trust v Minister of Social Development*<sup>7</sup>, the Constitutional Court of South Africa, crisply stated the common law<sup>8</sup> rules for granting personal costs orders against persons acting in representative capacities as follows:

'[5] The common-law rules for granting a personal costs order against persons acting in a representative capacity were based on what this Court in *Swartbooi* described as conduct that was "motivated by malice or amount[ed] to improper conduct". In many cases the formulation of Innes CJ in *Vermaak's Executor*, that the representative's "conduct in connection with the litigation in question must have been *mala fide*, negligent or

<sup>7</sup> *Supra*.

<sup>8</sup> Article 66(1) of the Namibian Constitution: '(1) ... the common law of Namibia in force on the date of Independence shall remain valid to the extent to which such ... common law does not conflict with this Constitution or any other statutory law.'

unreasonable”, has been followed.

[6] When public officials were guilty of acting in *mala fides* (bad faith), courts have in the past made personal costs orders against them. Costs orders have been given against judicial officers where they have acted in bad faith. In *Regional Magistrate Van Winsen AJ* held that it “is the existence of *mala fides* on the part of the judicial officer that introduces the risk of an order of costs *de bonis propriis* being given against him”. A similar approach was taken in *Moeca* in which an order to pay costs *de bonis propriis* (from his or her own pocket) was made against an administrative official. He had handled this enquiry so badly and had made an order so inappropriate that the Court held that, on the assumption that *mala fides* must be shown, that it had’.

[29] The Constitutional Court further stated that within the context of the Republic of South Africa, the above common law rules received constitutional affirmation and assent. To my mind, this position equally holds true in the context of the Republic of Namibia. Our Constitution, which is unequivocal in its quest for justice for all and its insistence on accountable, transparent and responsible exercise of public powers, duties and functions, with due regard to the rights and freedoms of persons, bears particular resonance in this regard.<sup>9</sup>

### Legal obligations

[30] Article 118 of the Namibian Constitution<sup>10</sup> (“the Constitution”), establishes the Namibian police force. The Namibian police force, is required to execute its powers, duties and functions in terms of the law.

[31] Messrs. Freddie Nghilinganye and Sackey Kokule are employed<sup>11</sup> by the Namibian police force as police officers. By virtue of their aforesaid appointments<sup>12</sup>,

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<sup>9</sup> The Namibian Constitution.

<sup>10</sup> Article 118 of the Namibian Constitution: ‘There shall be established by Act of parliament a Namibian police force with prescribed powers, duties and procedures in order to secure the internal security of Namibia and maintain law and order.’

<sup>11</sup> Section 4(1) of the Police Act, 19 of 1990: ‘...The Inspector-General shall, subject to the regulations, appoint fit and proper persons to be members of the Force’.

<sup>12</sup> Section 13 and 14(1) of the Police Act, 19 of 1990: ‘...The functions of the Force shall be - (a) the preservation of the internal security of Namibia; (b) the maintenance of law and order; (c) the

the two gentlemen (who were not at all gentle), are morally and legally obliged to execute their powers, duties and functions conscientiously and lawfully in terms of the Constitution and the Act, and in the best interests of and for the benefit of Namibian citizens and other persons who find themselves, for whatever reason, to be in this great country.

[32] The behaviour of the two officers, which is fully described in the main judgment, fits hand in glove with the description of what the Constitutional Court referred to as *mala fide* behaviour in the *Black Sash* judgment. Portions of the main judgment, quoted above, depict nothing short of gross and sustained bad faith exhibited by the officers to the plaintiff. For that reason, and again, in the absence of any argument in the opposite direction, I am of the firmly held view that this is a proper case in which the need to vindicate the honour and integrity of persons with whom police officers have to do is manifest and to also show all and sundry, that constitutional rights and freedoms in this Republic do matter and that they shall be upheld by this court.

[33] To round off this judgment, I find it imperative to underscore the need by all persons in this Republic, particularly those who wield and exercise public power, that in all their dealings, and without exception, the foundational principles and ethos of the Constitution must shine through and inform their motivations, actions and decisions. In this regard, I can do no better than to quote what I consider to be timeless remarks that fell from the lips of the majority of the Supreme Court of the Republic of Kenya, in *Raila Amolo Odinga and Another v Independent Electoral and Boundaries Commission and Two Others*:<sup>13</sup> Talking about the centrality of the Constitution at para 399, the court said:

‘Therefore, however burdensome, let the majesty of the Constitution reverberate across the lengths and breadths of our motherland; let it bubble from our rivers and oceans; let it boomerang from our hills and mountains; let it serenade our households from trees; let it sprout from our institutions of learning; let it toll from our sanctums of prayer; and to those who bear the responsibility of leadership, let it be a constant irritant.’

investigation of any offence or alleged offence; and (d) the prevention of crime; “... A member shall exercise such powers and perform such duties as are by this Act or any other law conferred or imposed upon such member, and shall, in the execution of his or her office, obey all lawful orders which he or she may from time to time receive from his or her superiors in the Force.’

<sup>13</sup> Presidential Petition No. 1 of 2017, delivered on 20 September 2017.

[34] It is my fervent hope that our Constitution, which is more than 25 years old now, should find a special place, meaning and application in the hearts and minds of all who live in this Republic. To those who exercise public power, in particular, it should serve as an eternal compass of the permissible and impermissible terrain to traverse; the right and the wrong; the praiseworthy and the despicable. It should, on no account, be relegated to the backseat or pushed to the periphery. It should remain central and dominant in the minds, hearts and actions of all, police officers expressly included. If need be, and to those otherwise inclined, it shall be made a constant irritant, like a mosquito yearning for fresh blood as the potential victim drifts in and out of sleep.

### Conclusion

[35] The findings in the main proceedings are illustrative of Messrs. Nghilinganye and Kokule's abuse of the sacred powers entrusted to them by the public. Their unconstitutional conduct, affirmed by their non-participation in these proceedings, was objectionable, unreasonable, unjustifiable and oppressive of the plaintiff's rights and served to place the plaintiff at the unnecessary expense in having to institute the main proceedings.<sup>14</sup>

[36] In view of the above, it would be unconscionable for the court to allow the taxpayer to pay for the willful, *mala fide* and arrogant conduct of the two officers, who in untold measure breached the Constitution and the plaintiff's fundamental rights in the scope of their employment and in the course of their duties with the Namibian police. The findings in the main proceedings warrant this court's censure by way of the order made below.

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<sup>14</sup> *Namibia Breweries Limited v Serrao* (T13131/2005) [2006] NAHC 37 (23 June 2006), Paragraph 15.

Order

[37] In the premises, I make the following order:

1. Messrs. Freddie Nghilinganye and Sackey Kokule are hereby ordered jointly and severally, the one paying and the other being absolved, in their personal capacities, to pay the costs occasioned to the plaintiff in prosecuting the main action proceedings.
2. The costs referred to in paragraph 1 above are to be levied on the scale between attorney and client.
3. A copy of this judgment is to be served in terms of the rules of court on Officers Mr. Freddie Nghilinganye and Mr. Sackey Kokule by the Office of the Government Attorney through the office of the Deputy-Sheriff, within 10 days from the date hereof.
4. The Office of the Government Attorney is directed to file the Deputy-Sheriff's returns of service evidencing compliance with paragraph 3 hereof within ten (10) days of service of the judgment and order on Messrs. Nghilinganye and Kokule.
5. There is no order as to costs in respect to these proceedings.
6. The costs component of this matter is regarded as finalised.
7. The matter is regarded as finalised and is removed from the roll.

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T. S. Masuku  
Judge

## APPEARANCES:

MR. SACKY KOKULE

Kadhila Amoomo

Instructed by:

Kadhila Amoomo Legal Practitioners, Windhoek

MR. FREDDIE

No appearance

NGHILINGANYE

PLAINTIFF:

L. Shikale

Instructed by:

Shikale &amp; Associates, Windhoek

DEFENDANT:

N. Ngula

Instructed by:

Government Attorney, Windhoek