

REPUBLIC OF NAMIBIA



HIGH COURT OF NAMIBIA, MAIN DIVISION, WINDHOEK

RULING ON STAY OF PROCEEDINGS

Case No: HC-MD-CIV-ACT-OTH-2017/00069

In the matter between:

THE GOVERNMENT FOR THE REPUBLIC OF NAMIBIA **1ST PLAINTIFF**

MAHAHEREO TRADITIONAL AUTHORITY **2ND PLAINTIFF**

and

BENESTUS KAMUNGUMA **1ST DEFENDANT**

INSPECTOR-GENERAL OF THE NAMIBIAN POLICE **2ND DEFENDANT**

CHAIRPERSON OF OMAHEKE LAND BOARD **3RD DEFENDANT**

Neutral Citation: *Government of the Republic of Namibia (Minister of Land Reform) v Kamunguma* (HC-MD-CIV-ACT-OTH-2017-00069) [2018] NAHCMD 237 (8 August 2018)

CORAM: PRINSLOO J
Heard: 31 July 2018
Delivered: 08 August 2018

ORDER

- a) The application for the stay of proceedings is granted pending the finalisation of the review application under case no. HC-MD-CIV-MOT-REV-2018-00039.
- b) No order as to costs.
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RULING IN TERMS OF PD 61 OF THE PRACTICE DIRECTIVES

PRINSLOO J:

[1] Before me is an application by the defendants for stay of proceedings for an order in the following terms:

- a) An order to stay the plaintiff's eviction action pending the finalisation of the review application under case the administrative review under case no. HC-MD-CIV-MOT-REV-2018-00039.

[2] The plaintiffs¹ sued the first defendant for ejectment from a portion of communal land at Erindirozondjou Village where he is in occupation.

¹ For purposes of this ruling I will refer to the parties as they are in the main action.

[3] The following facts are alleged by the first defendant in this regard in his founding affidavit:

- (a) First defendant claims rights to occupy by virtue of customary land right allocation by the first plaintiff's traditional authority;
- (b) First defendant applied to the third defendant for his customary land use rights to be registered in accordance with the Communal Land Reform Act² ('CLRA') and its accompanying regulations.
- (c) The application was submitted to the first plaintiff's traditional authority for approval and lodgement with the third defendant for its consideration and approval.
- (d) The pending application was publicly displayed as is required by CLRA and its regulations and no objections were lodged.
- (e) The third defendant exercised its statutory discretion and upheld the defendant's application for registration of the customary land right. It did not issue the required certificate as it was pending the permission from the first plaintiff to exceed the maximum area of 50 hectares, which the third defendant was empowered to register without such permission.
- (f) Should the first plaintiff fail to grant permission, the certificate would have indicated 50 hectares or less of the surveyed area subject to the first plaintiff's customary use rights.
- (g) Whilst awaiting the outcome of the decision of the first defendant, the first plaintiff cancelled the first defendant's customary right and the Office of the Permanent Secretary of the first plaintiff was to halt the issuing of the registration certificate.

² Act 5 of 2002 as amended.

Subsequent to that the first defendant received a letter of demand issued on behalf of the plaintiffs demanding that the he vacate the land and subsequent to that summons was issued and served in the matter in *casu*.

- (h) The cancellation of the first defendant's rights were not ratified by the third defendant in terms of s. 27(4) of CLRA.

[4] On behalf of the first defendant it was argued that the plaintiff relies on an administrative irregularity to support their cause of action which gave rise to the review application under HC-MD-CIV-MOT-REV-2018-00039.

[5] The parties are in agreement that an application for stay of proceedings should be granted sparingly and in exceptional circumstances only. After citing various case law on the matter, counsel for the plaintiffs held the position that the defendants have not made out a case for the relief they seek on the ground that they have not demonstrated the requisite strong grounds to stay the main action.

[6] The first defendant however made the submissions that the review application would in actual fact bring about a speedier remedy and benefit for all the parties concerned. On this score, the defendants are further of the view that the review application would provide the plaintiffs with ample opportunity to meet the first defendant's challenge to the veracity of the administrative action complained of.

[7] This court possesses the inherent jurisdiction to prevent the abuse of process by staying proceedings but also have the power to grant such an application in certain circumstances.

[8] This court's position on stay of proceedings was fittingly summarised in *Mouton v Gaoseb*³ where Masuku J made the following observations:

³ [2015] NAHCMD 257 (I 425/2011; 28 October 2015) para 20.

'It thus becomes clear that applications for stay of proceedings are not granted lightly and merely for the asking. It would seem that exceptional circumstances must be proved to be extant before the court may resort to this measure. I would think this is because once legal proceedings are initiated, it is expected that they will be dealt with speedily and brought to finality because tied in them are rights and interests of parties, which it is in the public interest to bring to finality without undue delay. Applications for stay have the innate consequence of holding the decisions and the rights and interests of the parties in abeyance. It is for that reason that these applications are granted sparingly. It would appear to me, in line with the overriding principles of judicial case management, the bar for meeting the requirements for stay of proceedings is even higher as the application impacts on the completion of the case, time expended on the application itself (not to mention the time to be waited during the time when the stay operates if successful) and obviously, the issue of costs.'

[9] The complaint of the first defendant in the review matter is based on the fact that the plaintiff's exercised discretionary powers which they do not have and have therefore acted *ultra vires*. The legality of the decisions taken by the plaintiffs is questioned and the determination of the legality of the exercise of plaintiff's discretionary power would be enough to constitute exceptional circumstances to convince this court to stay the proceedings pending the outcome of the review proceedings.

[10] I am satisfied that a case was made out for the temporary stay of the proceedings instituted by the plaintiff.

[11] The issue of costs is not at play in this instance as the parties are presented by government offices and as a result, neither party will suffer any prejudice.

[12] I therefore make the following order:

- a) The application for the stay of proceedings is granted pending the finalisation of the review application under case no. HC-MD-CIV-MOT-REV-2018-00039.

b) No order as to costs.

JS PRINSLOO
Judge

APPEARANCES:

PLAINTIFF:

G Kandovazu
of Office of the Government Attorney, Windhoek

1st DEFENDANT:

C van Wyk
of Legal Assistance Centre, Windhoek