

“ANNEXURE 11”

IN THE HIGH COURT OF NAMIBIA

Case Title: Maria Ukamba Haindaka // The Minister of Urban and Rural Development	Case No: HC-MD-CIV-MOT-GEN-2018/00254
	Division of Court: High Court
Heard before: Honourable Mr Justice Angula, Deputy Judge-President	Date of hearing: 13 August 2018
	Delivered on: 16 August 2018
Neutral citation: <i>Haindaka v The Minister of Urban and Rural Development</i> (HC-MD-CIV-MOT-GEN-2018/00254) [2018] NAHCMD 258 (16 August 2018)	
Result on merits: Merits not considered.	
The order: Having heard Mr Nekwaya (assisted by Mr Muhongo), counsel for the applicant, and Mr Namandje (assisted by Mr Ntinda), counsel for the respondents, and having read the documents filed of record: IT IS ORDERED THAT: <ol style="list-style-type: none">1. The first, fourth and fifth respondents are hereby interdicted and restrained from implementing the decision of the first respondent to conduct elections of the Chief of the Shambyu Traditional Authority scheduled on 18 August 2018.2. Paragraph 1 hereof, shall operate in the interim and with immediate effect, pending the finalisation of the relief sought in Part B, the Review Application.3. The first and third respondents are ordered to pay the costs occasioned by their opposition of the granting of this interim order such costs to include the costs of one instructing and two instructed counsel.4. The first respondent is to file the record of the proceedings sought to be reviewed on or before <i>10 September 2018</i>.	

5. The applicant is to supplement their papers, if so advised, on or before *28 September 2018*.
6. The first and second respondents are to file their answering affidavits on or before *12 October 2018*.
7. The applicant is to file her replying affidavit on or before *26 October 2018*.
8. The matter is postponed to **31 October 2018 at 08h30** for status hearing.

Reasons for orders:

Following below are the reasons for the above order:

[1] In granting the above order the court took into account the legal principles governing the granting of interim interdicts. These are: (a) a *prima facie* right, (b) a well-grounded apprehension of irreparable harm if the relief is not granted, (c) that the balance of convenience favours the granting of an interim interdict; and (d) that the applicant has no other satisfactory remedy. The court is satisfied that the applicant has proved the prerequisites for an interim relief order granted above. (*Nakanyala v Inspector-General of Namibia and Others*¹)

[2] The court thus rejects the contention that in these proceedings the applicant is required to make out a strong case as contended on behalf of the respondents. The court says so for the reason: that the applicant is not impeding the first respondent from exercising his statutory duties. On the contrary, the court is of the considered view that the application is aimed at ensuring that the first respondent, correctly applies the provisions of the Traditional Authorities Act².

Prima facie right

[3] The court is satisfied that the applicant has established a *prima facie* right in that: she was nominated as a candidate for the chieftaincy by her clan the VaMukwahepo; and furthermore she has been designated as one of the candidates to contest the election of the candidate to succeed the Hompa. Therefore, the applicant as a candidate, has a right to demand that the proposed elections processes and procedures are conducted in accordance with the customary laws and procedures of the Shambyu traditional community. For those reasons, the court is of the considered view that the applicant has demonstrated that she has a *prima facie* right worthy of granting an interim order in order to have the decision of the first respondent reviewed.

¹ 2012 (1) NR 200 HC

² Act No. 25 of 2000

[4] In asserting that she has a *prima facie* right the applicant is entitled to approach this court to seek appropriate relief. The court thus rejects the argument that by recognizing that right and protecting same through an interim order, the court is in breach of the principle of judicial deference. The court rejects that argument for the reason that this matter does not concern a determination or implementation of a Government policy but it concerns a correct interpretation and implementation of the provisions of the Traditional Authorities Act. It is the court's duty to interpret the law and protect the rights of the citizens embodied in the statutes.

Apprehension of irreparable harm

[5] The court is further satisfied that the applicant has established that her apprehension that she might suffer irreparable harm is well founded in that if the decision of the first respondent, is implemented, it has the potential of prejudicially affecting the applicant's legitimate expectation that the elections would be held in accordance with the customary laws and procedures of the Shambyu traditional community. In the court's view the apprehension of harm is well founded given the type and nature of elections proposed and envisaged by the first respondent, akin to the elections held in terms of the Electoral Act. The applicant sets out in detail certain matters which have not been complied with, but specifically prescribed by the Electoral Act, such as the absence of voter's roll. By doing so the applicant has in the process laid the basis for her apprehension to suffer irreparable harm if the elections were to be held in the manner proposed by the first respondent. Based on those reasons the court is satisfied that the applicant has satisfied this requirement as well.

The balance of convenience favours the applicant

[6] The court is of the view that there is a lower risk in granting interim relief against weighed against the risk of refusing the interim order. The court holds that view for the reason that if the elections are allowed to proceed in the format or manner proposed by the first respondent, it has the potential of offending against the customary laws and practice of the Shambyu traditional community, which might result in the general discontent of the members of the community not accepting the applicant as a duly elected Hompa. The court is of the further view that the balance of convenience favours the granting of the interim order for the reason that if the relief is not granted, it has the potential of depriving the applicant the right to be elected at a general meeting and by a majority vote of the members of the her community in accordance with the customary laws and practices of her traditional community.

[7] In the court's judgment, the applicant's right outweighs the inconvenience to be suffered by the 'staff members of various institutions, who have already applied for travel allowances and made arrangements' to

travel to the area to conduct the elections. The court is not persuaded that the fact that public funds have already been spent outweighs the applicant's right to have the election held in terms of her customary laws and practices of the Shambyu traditional community. As regard the first respondent's desire to have a Chief in office in order 'to administer and implement the customary laws', the first respondent did not deny the applicant's allegation that that the third respondent has been conducting the day to day affairs of the second respondent.

Alternative remedy

[8] On the facts of this matter, the court is satisfied that the applicant has made out a case that there is no other remedy to which she can resort to ensure that that the elections are held in accordance with the customary laws and practice of the Shambyu traditional community.

Judge's signature:	Note to the parties:
Counsel:	
Applicant(s)	Respondent(s)
E Nekwaya (with him T Muhongo) instructed by Thambapilai Associates, Ondangwa	S Namandje (with him M Ntinda) <i>of</i> Sisa Namandje & Co. Inc., Windhoek