

REPUBLIC OF NAMIBIA



HIGH COURT OF NAMIBIA MAIN DIVISION, WINDHOEK

RULING ON POINT *IN LIMINE*

Case no: HC-MD-CIV-MOT-GEN-2018/00204

In the matter between:

**PURROS CONSERVANCY COMMITTEE**

**APPLICANT**

and

**PETER UARAAVI**

**FIRST RESPONDENT**

**UNARO UARAAVI**

**SECOND RESPONDENT**

**KAUNDA UARAAVI**

**THIRD RESPONDENT**

**KATUTJIUA UARAAVI**

**FOURTH RESPONDENT**

**OTJIKAOKO TRADITIONAL AUTHORITY**

**FIFTH RESPONDENT**

**COMMUNAL LAND BOARD OF THE  
KUNENE REGION**

**SIXTH RESPONDENT**

**MINISTER OF LAND REFORM**

**SEVENTH RESPONDENT**

**THE STATION COMMANDER OF SESFONTEIN  
POLICE STATION**

**EIGHTH RESPONDENT**

**Neutral citation:** *Purros Conservancy Committee v Uaraavi* (HC-MD-CIV-MOT-GEN-2018/00204) [2018] NAHCMD 259 (18 July 2018)

**Coram:** ANGULA DJP

**Heard:** 17 July 2018

**Delivered:** 18 July 2018

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**ORDER**

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The point *in limine* is dismissed with costs.

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**RULING**

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ANGULA DJP:

Introduction

[1] The respondents raised a point *in limine* in law that the applicant does not have *locus standi* to bring this application as he was not given authority in terms of the Constitution of the applicant. Two main reasons have been advanced. First, no notice convening the Committee meeting had been given, 7 days prior to the meeting together with a proposed agenda as stipulated in the Constitution. Second, even if a *quorum* was present as prescribed by the Constitution when the resolution authorising the applicant to act in these proceedings, was adopted, not all members of the Committee were invited. It was thus submitted on behalf of respondents that to proceed to hold a meeting under those circumstances was impermissible in law.

[2] In support of his submission, Mr Namandje relied on the judgment of *Judicial Service Commission and Another v Cape Bar Council and Another* 2013 (1) SA 170, where the court *a quo* upheld a declaratory of the invalidity of the proceedings of South African's Judicial Service Commission (JSC), due to the absence of the President of Supreme Court of Appeal or his designated alternative when the JSC interviewed candidates for the judicial appointment. Counsel urged this court to adopt the approach of the court in that matter.

[3] Mr Namandje further referred the Court to the judgment of the Supreme Court of Appeal in *National African Federated Chamber of Commerce and Industry and*

*Others v Mkhize and Others*<sup>1</sup>. The issue for decision in that matter was whether a meeting was lawfully convened. If not all the resolutions passed thereat were invalid and of no force and effect. The court reiterated (at para 21), the principle that a constitution of a voluntary association must be interpreted in accordance with ordinary rules of construction applying to contracts in general; that in the course of interpretation, preference should be given to sensible meaning over an interpretation that leads to insensible or unbusiness-like results or undermines the apparent purpose of the document. In applying the principles to the facts, the court concluded that the meeting was unlawfully convened since only the president or in his absence his deputy had the requisite power to convene the meeting. As a consequence, all the resolutions passed at the meeting were declared invalid and of no force and effect.

[4] Mr Tjombe for the applicant on his part referred the court to the matter of *Montagu v Mothiba*<sup>2</sup> where the court stated that in considering whether there has been a material breach of a constitutional provision of a voluntary organisation, a court should not view the matter under strong magnifying glass and should not unduly enlarge every minor deviation from the strict letter of the constitutional provision being examined; that the court should adopt a practical common sense approach to the matter, keeping in mind that the persons called upon to administer such a constitution are usually laymen who were not lettered in law.

[5] In *Garment Workers Union v De Vries and Other*<sup>3</sup> one of the issues to be considered by the court was the alleged irregularity of the Mine Workers Union, one of the affiliates of the Council was assessed no. 20 000, which was greatly in excess than its actual membership. The court held that for the applicant to succeed, it had to be shown that the rights of the applicant had been violated by a diminution of the effect of its votes through the voting of a substantial number of persons who were not entitled to vote; or by the failure of persons to vote who were entitled to vote, by reason of the irregularity complained of and who affirm that they would have supported the applicant's nominee. The court express itself at p 1129 as follows, with

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<sup>1</sup> (805/13) [2014] ZASCA 177; [2015] 1 All SA 393 (SCA) (21 November 2014).

<sup>2</sup> 1975 (1) SA 618 at 626H-627A.

<sup>3</sup> 1949 (1) SA 1110 at 1129.

regard to the interpretation and enforcement of the provisions of the constitution of a voluntary organisation:

‘In considering questions concerning the administration of a lay society governed by rules, it seems to me that a Court must look at the matter broadly and benevolently and not in a carping, critical and narrow way. A Court should not lay down a standard of observance that would make it always unnecessarily difficult - and sometimes impossible to carry out the constitution. I think that one should approach such enquiries as the present in a reasonable common sense way, and not in the fault finding spirit that would seek to exact the uttermost farthing of meticulous compliance with every trifling detail, however unimportant and unnecessary, of the constitution. If such a narrow and close attention to the rules of the constitution are demanded, a very large number of administrative acts done by lay bodies could be upset by the Courts. Such a state of affairs would be in the highest degree calamitous – for every disappointed member would be encouraged to drag his society into Court for every trifling failure to observe the exact letter of every regulation. There is no reason why the same benevolent rules should not be applied to the interpreting of the conduct of governing bodies of societies as one applies to the interpretation of bye-laws.

#### Court's approach

[6] The general approach is that, in a proper case, the court is entitled to overlook any irregularity which does not occasion substantial prejudice. The court has a discretion to condone less than perfect procedure especially where the irregularity complained of did not prejudice the other party<sup>4</sup>. Technical objection should not be permitted, in the absence of prejudice, to interfere with expeditious and in expensive finalisation of the case on the real dispute.

[7] This court prefers the approach propounded in the *Montagu* matter with regard to the interpretation and administration of a constitution of a voluntary organisation such as the community project in the present matter.

[8] As regard to failure to give notice convening the meeting, I am satisfied with and accept the explanation tendered by the applicant for the failure to give notice convening the meeting. Furthermore, it would appear from the reading of the Constitution that the drafters of the Constitution foresaw or anticipated that it might

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<sup>4</sup> *Gariseb v Bayer* NR 118 at 121.

not always be possible to give 7 days' notice of the meeting. In order to provide for such an eventuality, clause 13.2 starts with a rider: 'where possible, Committee members shall receive notice and a proposed agenda at least 7 days prior to any meeting' (underling supplied for emphasis). The applicant further gives an acceptable explanation of the condition and circumstances under which the meeting was convened and held. From the description given, it was for all practical purposes an emergency meeting. The applicant states that Senior Community members had to do their best to calm the community members not to take the campsite by force. The applicant went on to say that it was after that incident and on the same day, that the committee members present held the meeting and took the decision to institute legal proceedings. It clear, from those facts that it was not possible to give notice convening the meeting. The first ground thus fails.

[9] As regard the second ground that it was impermissible that the resolution was taken when not all members of the committee were present. In my judgment there is no merit in this ground. The resolution was adopted by a duly quorate members of the Committee. In my view, the fact that some Committee members did not attend does not invalidate the resolution.

[10] Finally it would be unfair and unreasonable to impose the same compliance by the members of a community conservancy organisation as the proceedings of the JSC of SA or the Black Chambers of Commerce of South Africa. It is common knowledge that the JSC of South Africa is constituted by lawyers and Judges whereas the Black Chambers of Commerce is made up of affluent and well-read members of the black business community. It a notorious fact, which this court is entitled to take judicial notice, that the conditions in which members of the Purros community live are very harsh conditions; they are marginalised members of our society and country. They do not speak the official language, English; they have to rely on the interpretation of the provisions of Constitution of their association by other people. Under those circumstance it would be fair or appropriate for this court to consider any of the non-compliance with the provisions of their constitution by adopting the approach as propounded in *Government Workers Union* as well as the *Montagu* matter, by considering alleged non-compliance in 'a broadly and benevolently manner and not in a carping, critical and narrow way'.

[11] For the reasons the point *in limine* is dismissed with costs.

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H Angula  
Deputy-Judge President

## APPEARANCES

APPLICANT:

N Tjombe  
of Tjombe-Elago Inc., Windhoek

FIRST, SECOND, THIRD  
FOURTH RESPONDENTS:

S Namandje  
of Sisa Namandje & Co. Inc., Windhoek