

“ANNEXURE 11”

IN THE HIGH COURT OF NAMIBIA

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| Case Title: KLEINHANS // MAPOVE | Case No: HC-MD-CIV-MOT-GEN-2017/00346 |
| | Division of Court: High Court |
| Heard before: Honourable Mr Justice Angula, Deputy Judge-President | Date of hearing: 15 May 2018 |
| | Delivered on: 30 August 2018 |
| Neutral citation: <i>Kleinhans v Mapove</i> (HC-MD-CIV-MOT-GEN-2017/00346) [2018] NAHCMD 262 (30 August 2018) | |
| Result on merits: Merits not considered. | |
| The order: Having heard Mr Mouton , counsel for the applicant, and Mr Jacobs , counsel for the third respondent, and having read the documents filed of record: IT IS ORDERED THAT: 1. The application for the review of the third respondent's decision is hereby dismissed. 2. Each party pay his or its own costs. 3. The matter is removed from the roll and considered finalised. | |
| Reasons for orders: | |
| <p>[1] Serving before this court is a review application in which the applicant seeks an order to review and set aside the decision by the third respondent, Trustco Insurance, (Trustco), his insurer, to terminate the mandate of the applicant's legal practitioner to represent him in a court case which was serving before court.</p> | |

[2] The applicant and Trustco have an existing contractual relationship, in the form of an insurance policy in terms of which it has been agreed that in the event the applicant has a lawsuit, Trustco would procure the legal services of a legal practitioner to represent the applicant in such a lawsuit.

[3] As it happened, the applicant got involved in a lawsuit. The detail of the lawsuit are not relevant for the purpose of these reasons. Trustco then instructed a legal practitioner to represent the applicant in the said lawsuit pursuant to the insurance policy agreement between the applicant and Trustco.

[4] Subsequent thereto, a dispute arose between Trustco and the legal practitioner concerning the payment of legal services rendered by the legal practitioner to the applicant. As a result of the dispute, Trustco terminated its mandate to legal practitioner to further render legal services to the applicant and to continue representing the applicant in the then ongoing court case before court.

[5] Aggrieved by Trustco's decision to terminate the mandate to his legal practitioner, the applicant launched this review application seeking an order to review and set aside Trustco's decision.

[6] Subsequent to launching this application, and in the meantime, the lawsuit between the applicant and the third party in which the applicant was represented by the legal practitioner, whose mandate has been terminated by Trustco, has been settled between the parties.

[7] It follows therefore, in the court's considered view, that this application has become academic. The court say so for the reason that given the fact that the matter between the applicant and the third party has been settled, if the court were to proceed to adjudicate upon the question whether or not Trustco was entitled or justified to terminate its mandate to the legal practitioner to represent the applicant, would amount to furnishing legal advice to the applicant. It is to be noted that the applicant is merely asking that the decision by Trustco to terminate its' mandate to the legal practitioner be set aside: the applicant is not asking for a consequential order that Trustco be ordered to reinstate its mandate to the legal practitioner so that the latter may continue to represent the applicant.

[8] It has been held that the Court in each case must carefully determine whether or not the particular case in question is a proper case for the exercise of its discretion; that for a case to be a proper case it would require to be shown that, despite the fact that no consequential relief is being claimed or perhaps could be claimed in the proceedings, yet nevertheless justice or convenience demands that a declaration be made, for instance as to the existence of or as to the nature of a legal right claimed by the applicant or of a legal obligation said to be due by a respondent¹.

¹ *Adbro Investment Co Ltd v Minister of Interior* 1961 (3) SA 283 at 285 C-D.

[9] The court is of the view that in the present matter, a purely declaratory order is sought, if granted it would mere be of academic interest to the applicant.

[10] The court is therefore of the considered view that there would be 'no tangible or practical advantage to be gained²' by the applicant even if the relief sought by the applicant were to be granted, given the fact that the dispute between him and third party has been settled and therefore the applicant no longer requires a legal practitioner to represent him.

[11] In any event the relationship between the applicant and Trustco is contractual and therefore a review relief is incompetent under the circumstances. The applicant should have pursued his remedy based on contract between him and Trustco.

[12] For those reasons, the application stands to be dismissed.

[13] The issue of costs remains for determination. The court is of the view that the applicant became a pawn in the dispute between the legal practitioner and Trustco. I say this for the reason that it is common cause that even after the applicant's court case became settled, the legal practitioner continued to pursue this matter ostensibly on behalf of the applicant. It is clear that the applicant has no further interest in being represented by the applicant or the decision taken by Trustco. It is clear that the legal practitioner was perusing this matter under the guise of representing the interests of the applicant but in actual fact it was a fight between the legal practitioner and Trustco in respect of the alleged unpaid invoices for services rendered by the legal practitioner, which appear not to only relate to the services rendered to the applicant but also in respect of other mandates. Trustco must also have been aware that the applicant was used as a mere pawn in these proceedings and could not reasonably have expected to recover its costs from the applicant.

[14] In the light of the foregoing, I do not think that it would be fair to mulct the applicant with costs. Under the circumstances and in the exercise of my discretion, I consider it fair and reasonable to order that each party should pay its own costs.

| Judge's signature: | Note to the parties: |
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² L Baxter, Administrative Law, Juta, Limited, page 717.

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| Counsel: | |
| Applicant | Third respondent |
| C J Mouton <i>instructed by</i> Grobler & Co., Windhoek | S J Jacobs <i>instructed by</i> Koep & Partners, Windhoek |