

REPUBLIC OF NAMIBIA



HIGH COURT OF NAMIBIA, MAIN DIVISION, WINDHOEK
RULING (ITO) PD 61

CASE NO: HC-MD-CIV-MOT-GEN-2019/00458

In the matter between:

MARIA UKAMBA HAINDAKA

APPLICANT

and

MINISTER OF URBAN AND RURAL DEVELOPMENT	1ST RESPONDENT
PRESIDENT OF THE REPUBLIC OF NAMIBIA	2nd RESPONDENT
SHAMBYU TRADITIONAL AUTHORITY	3rd RESPONDENT
SOFIA MUNDJEMBWE KANYETU	4th RESPONDENT
COUNCIL OF TRADITIONAL LEADERS	5th RESPONDENT
THIRD RESPONDENT CHIEF'S COUNCIL	6th RESPONDENT

Neutral Citation: *Haindaka v Minister of Urban and Rural Development and Others* (HC-MD-CIV-MOT-GEN-2019/00458) [2019] NAHCMD 539 (9 December 2019)

Heard: 20 November 2019
Delivered: 20 November 2019
Reasons: 09 December 2019

REASONS

MASUKU J:

[1] An order granting an interim interdict, preventing the Minister of Rural and Urban Development, ('the Minister'), from attending the designation of Ms. Sofia Mundjembwe Kanyetu, the 4th respondent, as the Chief of the Shambyu Traditional Authority and from publishing her name in the Government Gazette by the President of this Republic, together with ancillary relief, was granted on 20 November 2019. The reasons for the order follow below:

[2] The applicant, together with the 4th respondent had been nominated by the respective royal houses of the Vakwankora Royal Family. The Minister called an election in 2018 for the eventual election and subsequent designation of the Chief (*Hompa*). This decision was set aside by Angula DJP, referring the matter back to the Minister, by judgment dated 9 August 2019.

[3] The Minister requested the applicant and the respondent to file rectified nomination forms and to submit them to him for him to approve the candidate for designation. He, in the event chose the 4th respondent. The applicant pointed out that the Minister had acted improperly in doing so for the reason that he had overlooked the decision of Angula DJP, which called for the Minister to decision made by the previous incumbent, Minister Shaningwa. An application to review the current Minister's decision was prayed for, for later determination.

[4] The court, after hearing the parties, granted an interim interdict, pursuant to an urgent application by the applicant. I briefly deal with the relevant matters in turn below.

Urgency

[5] The applicant, in her affidavit, complied with the requirements of rule 73(4)(a), in that she stated the reasons why she claimed that the matter is urgent. In this regard, she wrote a letter to the Minister complaining about him not complying with the decision of Minister Shaningwa but the Minister did not reply to this letter but simply approved the designation of the 4th respondent.

[6] The applicant learnt about the coronation ceremony only a few days before the stipulated date and after obtaining legal advice, she promptly brought the application on an urgent basis. I am satisfied that she complied with the requirement of this subrule. Furthermore, the Minister's omission to respond to the letter, left her with little choice but to approach the court on an urgent basis.

[7] The requirements of rule 73(4)(b), were also met. In terms of this subrule, the applicant should state the reasons why she claims she cannot be afforded substantial redress at a hearing in due course. In this regard, the applicant claims that the Minister violated the order of Minister Shaningwa, which has to date not been set aside and that it would be unlawful, in the circumstances to approve the designation of the 4th respondent in the circumstances.

[8] It must be mentioned also that there is an affidavit filed by Ms. Cecelia Hangura Mwenere, which details the rituals that a person to be designated during the coronation ceremony has to undergo. The truthfulness and accuracy of its contents have not been questioned or denied by the respondents and it thus stands. The rituals, which appear to include the invocation of ancestral spirits and lighting fires in an unconventional manner, together with anointing the designated person with fat of a lion or python and wearing of beads, allegedly to protect them from evil spirits, are carried out in the process leading to the coronation.

[9] I am of the considered view that this highly spiritual exercise, together with the gymnastics involved, must, in view of the seriousness apparent from

the affidavit, be reserved for and only undergone by a person who is eventually unrivalled. Persons with questions marks of eligibility hanging over them should be excepted. That the ceremony may later be performed, is in my view no proper answer. In the premises, I form the view that the applicant cannot therefor be afforded substantial redress in due course, considering as well the possibly illegal nature of the approval of the designation, if eventually held in the applicant's favour.

Interim interdict

[10] An applicant for an interim interdict has to allege and satisfy the court that (a) he or she has a *prima facie* right although open to some doubt; a well-grounded apprehension of irreparable harm; the balance of convenience favours the granting of interim relief; and that the applicant has no other satisfactory remedy.¹

[11] From the issues discussed above, I am of the considered view that the applicant has met the requirements of the relief sought. The *prima facie* right is dealt with in the portion relating to the urgency, namely, the possibly unlawful actions of the Minister, in not complying with the decision of Minister Shaningwa not having same set aside by a competent court. If the decision to designate the 4th respondent is found to be wrong, then the applicant would, from the first day the former is in office, be deprived of occupying the exalted office, with the 4th respondent possibly committing an irregularity everyday while in office, whilst waiting for the setting aside of the decision in due course.

[12] The balance of convenience, considering the rituals addressed in the affidavit of Ms. Mwenere, in my considered view, viewed in *tandem* again with the decision of Minister Shaningwa, if found to stand, would, in my considered view show that the balance of convenience favours the applicant. No other remedy would, in my considered view, grant the applicant a satisfactory remedy.

¹ C. B. Prest, Interlocutory Interdicts, Juta & Co, 1993, p 55.

[13] This is so because if the applicant is correct in her interpretation of the decision of Minister Shaningwa and her understanding of the Angula DJP judgment, then the foundational principle of the rule of law, would be violated everyday that the current Minister's decision to approve the designation of the 4th respondent is being observed. This does no auger well for a constitutional democracy, where the rule of law is paramount, evidenced by it being a foundational principle included in Art 1 of the Constitution.

[14] The last issue related to costs. The applicant having been successful in obtaining relief, there is no reason why the costs should not, even at this stage follow the event. I accordingly granted the applicant an order for costs.

T.S. Masuku
Judge

APPEARANCES:

APPLICANT: T. Muhongo

Instructed by: Appolos Shimakeleni Lawyers, Windhoek

1st, 2nd, 3rd, 5th and

6th RESPONDENTS: F. Kadhila
Of Government Attorney

4th RESPONDENT: M. Ntinda

Of Sisa Namandje & Co. Inc., Windhoek