REPUBLIC OF NAMIBIA NOT REPORTABLE

HIGH COURT OF NAMIBIA MAIN DIVISION, WINDHOEK

RULING

Case no: HC-MD-CIV-MOT-GEN-2020/00118

In the matter between:

KATRINA SHIMBULU	**APPLICANT**

and

SWAPO PARTY OF NAMIBIA	**FIRST RESPONDENT**
SECRETARY GENERAL OF THE SWAPO PARTY OF NAMIBIA	**SECOND RESPONDENT**
THE SWAPO PARTY POLITICAL BUREAU	**THIRD RESPONDENT**
OSHAKATI TOWN COUNCIL	**FOURTH RESPONDENT**
CHAIRPERSON OF OSHAKATI TOWN COUNCIL	**FIFTH RESPONDENT**
CHIEF EXECUTIVE OFFICER OF THE OSHAKATI TOWN COUNCIL	**SIXTH RESPONDENT**
MINISTER OF URBAN AND RURAL DEVELOPMENT	**SEVENTH RESPONDENT**

Neutral citation: *Shimbulu v Swapo Party of Namibia* (HC-MD-CIV-MOT-GEN-2020/00118) [2020] NAHCMD 211 (3 June 2020)

Coram: ANGULA DJP

Heard: **26 May 2020**

Delivered: **3 June 2020**

Flynote: Motions and applications – Urgent application – Part A: Interim interdict sought – Part B: Declaring the decision of first or third respondent unconstitutional and unlawful.

Summary: This is an urgent application, in which the applicant seeks an interim interdict against the first or third respondent to implement the decision to remove her as Councillor of the Oshakati Town Council, taken without affording her an opportunity to be heard – The court considered the four requirements to be satisfied before an interim interdict can may be granted.

The first, second and third respondents raised three points in law *in limine*. First, the non-joinder of the candidate next on the first respondent's list of candidates qualified for nomination a councillor for the Oshakati Town Council; that the applicant failed to make out a case for urgency, alternatively that the urgency, if any, was self-created; and that the applicant had approached the court with unclean hands.

On merits, the respondents contended that the applicant failed to make out a case for the granting of an interim relief.

Held that; the three points *in limine* are dismissed.

Held that; the first, second and third respondents failed to place before court conclusive evidence as stipulated by the Electoral Act, 2014, that the person nominated by the first respondent, her name appears on the list of candidates eligible for nomination as candidates councillor for the Oshakati Town Council and therefore that person contented by the respondents have substantial or direct interest in the matter before court.

Held that; the court was satisfied that, all facts considered, the matter was urgent and could be heard as urgent.

Held; that respondents failed to prove any dishonesty, fraudulent conduct or *mala fide* on the part of the applicant accordingly the point *in limine* relating to unclean hand was dismissed.

Held; applicant was not granted *audi* before the decision to remove her as Councillor of the Oshakati Town Council was taken. Accordingly the applicant had proved that she had a *prima facie* entitling her to be granted an interim interdict.

Held that, the applicant apprehension that she would suffer irreparable harm if the interim order was not granted, was well founded.

Held; that the balance of convenience favoured the granting of interim interdict.

Held; that the internal remedy provided by the first respondent's rules and procedures, consisting inter alia of an appeal, would not have had the effect of suspending impugned decision. Accordingly, court held that the applicant had made out a case that she did not have other satisfactory remedy.

ORDER

1. The three points *in limine* – non-joinder; lack of urgency or self-created urgency; and that the applicant has dirty hands – are dismissed.

2. The applicant's non-compliance with the rules of this court relating to time periods, forms and services is condoned and the applicant is granted leave that this matter be heard as one of urgency in terms of rule 73(3).

3. The first, second and third respondents are hereby interdicted and restrained from implementing the decision taken by the first respondent, alternatively the third respondent, on 16 March 2020, to recall the applicant as a councillor of Oshakati Town Council and to replace her with one Ms Kamwanka.

4. That the status *quo ante* as it prevailed before 16 March 2020 shall remain in place pending the final determination of the relief sought by the applicant in Part B of the notice of motion.

5. Order three (3) above shall operate as an interim interdict with immediate effect, pending the finalisation of the relief sought in Part B of the notice of motion.

6. The matter is postponed to **10 June 2020** at **08h30** for case management hearing.

7. The parties are directed to file a joint case management report on or before 8 June 2020 – setting in particular, how the parties wish to proceed.

RULING

ANGULA DJP:

Introduction:

[1] The applicant brought this application on urgent basis in which she seeks an interim interdict pending the finalisation of the main relief sought. The applicant is a member of a political party, Swapo Party of Namibia, the first respondent. She is currently serving as a councillor of the Oshakati Town Council, the fourth respondent ('the Council'), and has so served since 16 December 2019. She claims to be representing the Swapo Party in the Council in terms of the Local Authorities Act, No. 23 of 1992. On 19 March 2020, the applicant received a letter from the Swapo Party, dated 16 March 2020, advising her that a decision had been taken to remove her from the Council and she was to be replaced by Ms Kamwanka.

[2] As a result, the applicant launched this application seeking an interim order interdicting and restraining the first to sixth respondents from implementing the Swapo Party decision of 16 March 2020, (the impugned decision) pending the finalisation of the main action in which she seeks an order declaring the said decision unconstitutional, alternatively unlawful, illegal and null and void *ab initio*. The applicant's main gripe is that she was not afforded an opportunity to be heard before the decision to remove her as a councillor was taken by the Swapo Party.

[3] Except for the seventh respondent, the remainder of the respondents oppose the application. After the Council filed its answering affidavit, it transpired that, the fourth, fifth and the sixth respondents had already complied with their statutory

obligations as stipulated by the Local Authorities Act, 1992. Accordingly, the interim order sought against the fourth to sixth respondents could not be granted. As a result, when the matter was called the counsel for the applicant informed the court that the applicant no longer sought an interim order against the fourth to sixth respondents. Counsel for those respondents was excused from attending further proceedings relating to Part A of the Notice of Motion.

Points *in limine*:

[4] The first to third respondents raised three points *in limine*. In view of the fact that only the first, second and third respondents opposed the granting of the interim order, for the sake of brevity, I will henceforth refer to them jointly as 'the respondents'.

Non-joinder of Ms Angelina Kamwanka

[5] The respondents contended that Ms Kamwanka has a direct and substantial interest in this matter for the reason that she is next in line after the applicant on the Swapo Party list of candidates for Oshakati Town Council, which was gazetted after the 2015 local authorities' elections. It is submitted that Ms Kamwanka's rights became vested when the applicant resigned as a councillor of the Council during October 2019; and when the Swapo Party communicated to her that she was the next person on the Swapo Party list to be sworn in as a councillor.

[6] I was referred to a number of cases dealing with the principles applicable when a joinder is considered. Those principles are trite. Therefore, there is no need regurgitate them here. I indicated to Mr Makando, who appeared for the respondents, that there was no acceptable evidence before court that Ms Kamwanka was on the Swapo Party list, let alone that she is next on the list after the applicant. This is because s 87(1) of the Electoral Act, Act No. 5 of 2014, provides *inter alia,* that the list of candidates for a political party must be published by the Electoral Commission in the Gazette. Subsection (6) thereof provides that the list so published in the Gazette 'is on mere production of a copy of the Gazette in which it was published, and in the absence of proof to the contrary, conclusive evidence that the ... (b) any candidates on the list of candidates nominated in respect of the

registered political party or registered organization'. The respondents carry the burden to prove what they allege. It is common cause that no copy of the Gazette in which the list was published was attached to the answering affidavit of the respondents.

[7] It follows therefor in my judgement, that there is no evidence before court as prescribed by the Electoral Act, 2014 that Ms Kamwanka's name appears on the Swapo Party list for the nominated candidates for the Oshakati Town Council. This means that there is no evidence that Ms Kamwanka has a direct and substantial interest in the current proceedings. It is for those reasons that this point *in limine* stands to be dismissed.

Lack of urgency

[8] The respondents argue that the applicant failed to meet the requirements stipulated by rule 73 in that she did not set out explicitly the circumstances which render the matter urgent and why she claims she cannot be afforded substantial redress at a hearing in due course. The respondents point out that, in terms of s 13 of the Local Authorities Act, 1992, the Swapo Party has a period of three months from the date of the publication of the vacancy in the Gazette, to fill that vacancy. In this regard it is common ground that the vacancy was only published on 15 April 2020. Furthermore, in terms of the Swapo Party rules, the applicant has substantial internal remedies available to her. Mr Makando, during oral submissions, pointed out that there is no trigger point, which caused the applicant to launch this application. I do not agree with the respondents contentions for the reasons set out below.

[9] I start off with the alleged absence of the trigger point. The trigger point is obviously the letter of 16 March 2020, which was not even directly addressed to the applicant. She received it through a third party on or about 19 March 2020. From the time the applicant received the letter, she explained in detail what steps she took to launch this application. She narrates that she received the letter via the Whatsapp messaging service while she was away from home and at her farm in Outjo district. She requested people at home in Oshakati to gather the relevant documents for her and to transmit them to her electronically. At the same time, she contacted her lawyer in Windhoek, who requested her to send the documents to her electronically.

[10] Thereafter, the consultation took place telephonically on 30 March 2020. The following day, 31 March 2020, the applicant's legal practitioner dispatched a letter of demand to the respondents, demanding that they should not implement the impugned decision. The letter stipulates the deadline as 20 April 2020 for the reason that the prevailing stage one of the Covid-19 Emergency regulations were expected to come to an end on Friday, 17 April 2020. The applicant further explains that her legal representative received a negative response from the legal practitioners for the Council, advising that the Council will proceed to implement the decision and to comply with its statutory obligations. On the same day, the applicant instructed her lawyer to prepare the current application. Consultation with instructed counsel took place telephonically on 22 April 2020. The application was launched a day thereafter on 24 April 2020.

[11] In considering the foregoing undisputed actions taken by the applicant, the court must take into account that the steps were taken under the restrictive Covid-19 regulations, which curtailed movements and prescribed social distancing country-wide. Taking into account all those facts, I am satisfied that the applicant has not delayed unduly to bring this application.

[12] As regards the question why the matters is urgent, the applicant points out that the Swapo Party has already given directions that Ms Kamwanka be sworn in as the Councillor to replace her. She points out that swearing in can take place any day if the respondents are not interdicted. I agree with the applicant that for that reason alone, the matter is urgent. Furthermore, once Ms Kamwanka has been sworn in, the applicant, who on her version, has been procedurally and lawfully sworn in as a councillor, will suffer irreparable harm. I should mention for avoidance of doubt that the question whether the applicant has been procedurally and lawfully sworn in as councillor is not up for decision in the present proceedings.

[13] For the foregoing reasons, I hold that the applicant has made out a case that the matter is urgent. That brings me to the last point *in limine* namely that the applicant, is allegedly approaching the court with dirty or unclean hands.

The applicant allegedly approaching the court with unclean or dirty hands

[14] The respondents allege that the applicant approached this court with dirty hands because she had previously resigned as a councillor for the Council in a bid to secure a seat in Parliament during the national elections held during November 2019. She failed to secure a seat as a parliamentarian. The respondents point out that the applicant, as a veteran member of the Swapo Party of some 33 years standing and having served as a councillor for 23 years, knows the rules and regulations of the Swapo Party pertaining to elections as well as the provisions of the Local Authorities Act, 1992 relating to elections for councilors. Accordingly, so the argument goes, she should have known that she can only be elected at a District Conference. Therefore, the respondents argue, the applicant's allegation that she was elected at the District meeting of both Oshakati East and West is not true and her allegation in that regard has been denied by the District Executives of those Districts. Furthermore, her purported swearing in was illegal and was done in violation of s 13(3) of the Local Authorities Act, 1992. In addition, the respondents conclude, the applicant's name is still on the list of the Swapo Party list candidates for the National Assembly.

[15] In her replying affidavit, the applicant denies that she acted contrary to the rules and procedures of the Swapo Party. She contends that she has been procedurally and lawfully elected. In this connection she refers to the minutes of the meeting at which she was elected. She points out further that everything she did was sanctioned by or done on the instructions of the District Executive Committee. The applicant decries the conduct of the District Executive members 'who have now thrown me under the bus alleging that I acted alone in being sworn in'.

[16] The law is very clear, that failure to prove dishonesty, fraudulent conduct or *mala fide* on the part of an applicant, a court will not bar such an applicant from accessing the court for the purpose of obtaining relief.[1]

[17] The factual dispute whether the applicant was elected at a meeting of those two districts, is to be resolved, applying the well-known Plascon Evans rule:

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[1] *Mugimu v Minister of Finance* (HC-MD-CIV-MOT- REV-2017/00128) [2017] NAHCMD 151 (19 May 2017).

'The facts averred in the applicant's affidavits, which have been admitted by the respondent, together with the facts alleged by the respondent. However, if the respondent's version consists of bald or uncreditworthy denials, raises fictitious disputes of fact, is palpably implausible, far-fetched or so clearly untenable, the court is justified in rejecting them merely on the papers'.[2]

[18] Applying the above test to the dispute created by the denial proffered by the District Coordinators namely, that the applicant was not elected, it is clear that their denials are far-fetched and untenable. The applicant's version is supported by text messages sent to her by those Coordinators notifying her of the meetings to be held; the minutes of meetings; and letters inviting her to attend the swearing in session. All this documentary evidence contradicts and serves to discredit the Coordinators' versions. It would appear to me that if anybody is to be blamed for anything unprocedural, done contrary to the Swapo Party rules and procedures, it is the Coordinators and not the applicant. Judging from the evidence before court, it would appear to me that the applicant had been neutral in the election process and the arrangements for the swearing in. The jury is out as to whether she was really led like a lamb to the slaughter.

[19] As to the allegation that the applicant breached the provisions of s 13 of Local Authorities Act, 1992, it appears to me that there has been a wholesale breach of the that section by all the main players to these proceedings. In my view, the saying 'what is the sauce for the goose is sauce for sauce for the gander', applies.

[20] To start with, the Chief Executive Officer of the Council failed to 'forthwith' give notice in the Gazette as required by s 13(3) about the occurrence of the vacancy when the applicant resigned on 17 October 2019. According to the Acting CEO, she only drafted the notice of vacancy on 25 March 2020; and she 'was informed that the publication would be done on the 1st of April 2020'. It however turned out that the publication was only done on 15 April 2020. That is more than three months after the vacancy had occurred. By any standard, that cannot be construed to be 'forthwith' as dictated by the s 13 of the Local Authorities Act.

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[2] 2009 (2) A 277 SCA at para 26.

[21] The Swapo Party is equally not squeaky clean either in this regard. Subsection 13(4)*(a)* of the Act, has not been complied with, in that the vacancy has not been 'filled within three months after it had occurred by the nomination by the political party … which nominated the member who has vacated his or her office'. In other words the Swapo Party took more than three months to nominate a candidate. Even if it were to be contended that the Swapo Party was waiting for the vacancy to be published in the Gazette before it could nominate a candidate, the fact of the matter is that on its own version, it had already nominated Ms Kamwanka on the 16 March 2020, long before the vacancy was published in the Gazette, whereas the section stipulates that the publication must first take place before the nomination can be made. Notwithstanding all those non-compliances with the provisions of the Local Authorities Act, the court does not consider the respondent to have unclean hands and thus deny them access to court.

[22] I conclude therefore that the respondents have not made out a case that the applicant has approached the court with unclean hands. This point *in limine* is accordingly dismissed. I move to consider the merits.

Has the applicant made out a case entitling her to an interim order?

[23] The legal requirements for the granting of an interim interdict to an applicant are well established. They are that the applicant has to establish: (a) a *prima facie* right though open to some doubt, (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.[3] I proceed to consider whether the applicant has established each of those requirements.

Prima facie right:

[24] Mr Makando submitted that the applicant is trying to protect her right to be a councillor and 'that the said right had not lawfully accrued to her and thus is not worthy the protection by this Court'. This submission is incorrect. The right which the

[3] *Mega Power Centre CC t/a Talisman Plant and Tool Hire v Talisman Franchise Operators (Pty) Ltd and Others, Case No. SA 46/2013 delivered on 18 December 2014*.

applicant seek to protect and which is the subject matter of Part B of this application, is the right to be heard – namely, the right to *audi* before the decision to remove her as a councillor was taken.

[25] In this regard the applicant says the following at para 54.3 of her founding affidavit.

> 'The decision [taken on 16 March 2020] was made without a fair process being followed. I was not heard. Nor given an opportunity to be heard. Should it be found that there was a hearing, I deny that any adverse finding was made against myself in this respect. I also deny that such finding together with reasons was ever communicated to myself.'

[26] The applicant proceeds to allege that the decision was based on irrelevant considerations and/or capricious grounds.

[27] In response to the applicant's above allegations, Ms Shaningwa, the Secretary General of the Swapo Party and the deponent to the opposing affidavit on behalf of the Swapo Party, denies that 'the decision of the first or third respondent was based on irrelevant considerations or alleged capricious considerations'. As regards the denial for granting the applicant a hearing, the deponent states: '[S]he was given *audi* during the investigation'.

[28] In my view, the allegation that the applicant was given *audi* during the investigation into her actions, is untenable and does not raise a serious dispute of facts. First, proper *audi* cannot take place during investigations. The *audi* in compliance with the dictates of the Constitution and the common law, envisages that the affected person is given a hearing where that person is afforded an opportunity to hear the allegations against him or her; to cross-examine the witnesses testifying against him or her and to testify in his or her defence and to call witnesses to testify on his or her behalf. And finally to be given the reason(s) for the verdict. In *Nghidimbwa v Swapo Party of Namibia*[4] at para 65 this court as presently constituted, cited with approval the exposition of the concept of *audi* by the court in *Swaziland Federation of Trade Union v The President of Industrial Court of Swaziland and Others*. As it appears, the Swapo Party was a party in the

[4] (HC-MD-CIV-MOT-REV-2016/00257) [2017] NAHCMD 298 (16 October 2017)).

Nghidimbwa matter. I would therefore have thought that it would have heeded the message set out in that matter. Given the repeat of the same conduct, it would appear that it is necessary to once again repeat it and, so to speak, to drive the message home.

'The *audi alteram partem* principle i.e. that the other party-must be heard before an order can be granted against him, is one of the oldest and most universally applied principles enshrined in our law. That no man is to be judged unheard was a precept known to the Greeks, was inscribed in ancient times upon images in places where justice was administered, is enshrined in the scriptures, was asserted by an 18th century English judge to be a principle of divine justice and traced to the events in the Garden of Eden, and has been applied in cases from 1723 to the present time (see De Smith: Judicial Review of Administrative Action p.156; Chief Constable. *Pietermaritzburg v Ishini* [1908] 29 NLR 338 at 341). Embraced in the principle is also the rule that an interested party against whom an order may be made must be informed of any possibly prejudicial facts or considerations that may be raised against him in order to afford him the opportunity of responding to them or defending himself against them. (See Wiechers: Administratiefreg 2nd edn. p. 237).'

[29] The court thus rejects in the strongest terms the argument by Ms Shaningwa in para 82.1 of her opposing affidavit that because 'Her (the applicant's) return (to the Council) therefore violates both the Constitution of the Republic of Namibia, the Act and the Swapo Party Rules and Regulations. To that extent, it is disputed that the rules of natural justice should have applied in this case'. In my view, the statement is an anathema to the rule of law upon which our Constitution is firmly anchored. Taken to its logical conclusion, the statement means that by a mere allegation that she violated those instruments referred to, the applicant is not entitled to the due process the of law and is automatically guilty of the alleged violation and what remains is that she is liable to be condemned without a hearing. As demonstrated in the quote from *Swaziland Federation of Trade Union* case above, the first *audi* was afforded by God to the first person, Adam when he sinned. So original and inviolable is the right to be heard.

[30] The court is satisfied that the applicant has established a *prima facie* right in that she was entitled to be heard before the decision to remove her and to replace her with Ms Kamwanka was taken. I therefore hold that in asserting that *prima facie* right the applicant is entitled to approach this court to seek an appropriate relief.

Apprehension of irreparable harm

[31] In this connection the applicant says that she harbours an apprehension that she will suffer irreparable harm if the respondents are not interdicted from implementing the impugned decision; that a new councilor will be sworn in and she will be replaced by that councillor. She would therefore be denied an opportunity to participate in the activities of the Council. This allegation is to be viewed from the applicant's point of view that she had been procedurally and lawfully elected and sworn in.

[32] The respondents argue that the applicant voluntarily vacated her position and that her return to the Council should have been sanctioned by the Swapo Party which return was not so sanctioned. They therefore allege that the applicant was unlawfully elected into the position as a member of the Council.

[33] In considering this aspect, I should once again stress that this court is not called upon to decide whether the applicant occupies her current position lawfully or otherwise. No order to that effect is sought from this court. This court cannot pronounce itself on that aspect as it is not a matter serving before court. It is therefore necessary to mention in this connection that according to Ms Shaningwa, the Secretary General of Swapo and the deponent to the opposing affidavit of the respondents, the respondents 'intend to lodge a separate application, if need be, in terms whereof the wrong process followed in the purported re-election of the applicant will be set aside'.

[34] Given the fact that the Swapo Party has already given notice to the acting CEO that the applicant must be replaced with Ms Kamwanka and that notice has not been withdrawn or suspended, the court is satisfied that the applicant has established that her apprehension that she might be replaced is well founded if implementation of the impugned decision is not interdicted. A further factor the court takes into account in this regard is the fact that the applicant is currently receiving remuneration for her duties as a councillor. Therefore, if the respondents are not interdicted from implementing the impugned decision, the applicant will in all likelihood lose her remuneration as a councillor. Again it is irrelevant for the present

interim relief sought whether that remuneration is legally due or not. That is a question which might be determined in the application the respondents wish to institute.

[35] Taking all those facts into account, the court is satisfied that the applicant's apprehension that she is likely to suffer irreparable harm is well founded. The court is therefore satisfied that the applicant has satisfied this requirement.

The balance of convenience favours the applicant

[36] The applicant states that the balance of convenience favours her in view of the unlawful act committed by the first and/or third respondent in purportedly removing her as Councillor. She further points out that the respondent failed to give an undertaking not to take steps which are prejudicial to her rights pending the outcome of this application.

[37] Mr Makando submits that the applicant's request that the court orders that the status *quo ante* be maintained, amounts to the court sanctioning the 'perpetuation of unlawful act by declaring that she returns as a member of the Local Authority Council' … It is contended that, if, this is granted it would be endorsing a contravention of s 86(6) of the Electoral Act. The argument is rejected for the following reasons: First, the argument is misleading because it assumes that the court will be 'declaring' that the applicant 'returns' to the Council. None of the parties before court is asking or has applied for such an order. In the absence of an application by any of the parties for such an order, the court cannot make such an order. Second, the argument erroneously assumes that by returning to the Council, the applicant, acted unlawfully. The respondents might hold the view that the applicant in doing what she acted unlawfully. They might be right. But unless and until such time the applicant's action has been declared to be unlawful by a competent court, it stands. This much is clear given the fact that her action was given a seal of approval through an oath of office administered by a judicial officer. Authority for this view is the well-known *Oudekraal* judgment.[5]

[5] *Oudekraal Estates (Pty) Ltd v The City of Cape Town & Others* 2004 (6) SA 222 (SCA).

[38] The court is of the 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 disrupting the smooth running of the affairs of the Council, to the detriment of the residents of Oshakati Town, who might become the so-called 'collateral damage' in the tussle between the parties to these proceedings. A further reason why the balance of convenience favours the granting of the interim order is that the status *quo* remains pending the finalisation of the main application. In any event, that status *quo* has been in place for more than five months since the applicant was sworn in as a Councillor on 16 December 2019. Furthermore, in terms of the Local Authorities Act, even if it were to be found later that the applicant ought not to have been participating in the decision-making of the Council, for whatever reason, the decisions of the Council remain valid.

[39] Mr Makando submits that if the interim order is granted it will mean that the Swapo Party shall be without a Councillor in the Council if the period of three months stipulated by s 13(4) were to expire. The Swapo Party had been aware of the existence of the vacancy since October 2019. It did nothing to nudge the CEO of the Council to publish the notice of the vacancy until it was overtaken by the events which from the subject matter of the present application. Furthermore, it might not be entirely correct to contend that the Swapo Party will not have Councillors in the Council. Because it appears to be common cause that the applicant is a member of the Swapo Party and returned to the Council on the Swapo Party ticket. It is common cause that the applicant served as a Councillor for the same Council for 23 years before she decided to resign in October 2019. The Council and the residents of Oshakati Town stand to benefit from her experience if the interim order is granted and pending the finalization of the main application. It would appear therefore that until the question whether the applicant's return to the Council had been procedural and lawful has been resolved, the Swapo Party will have a Councillor in the Council in the person of the applicant. The fact that she might no longer a preferred person by the Swapo Party is neither here nor there. This, in my view, constitutes a further reason why the balance of convenience favours the granting of the interim order.

No other satisfactory remedy

[40] The respondents do not dispute that, before the applicant launched this application she first sought an undertaking from the Swapo Party that they will not implement the impugned decision. This is a relevant consideration under this heading. Furthermore, the respondents' argument that the applicant failed to utilise the internal remedies is not an answer to the dilemma faced by the applicant, in that such interim remedy in the form of an appeal does not automatically suspend the implementation of the impugned decision.

[41] Accordingly, on the facts of this matter, the court is satisfied that the applicant has made out a case that there is no other satisfactory remedy to which she can resort, in order to ensure that she is granted *audi* before the decision to remove her from the Council is made.

[42] In the result, I make the following order:

1. The three points *in limine* – non-joinder; lack of urgency or self-created urgency; and that the applicant has dirty hands – are dismissed.

2. The applicant's non-compliance with the rules of this court relating to time periods, forms and services is condoned and the applicant is granted leave that this matter be heard as one of urgency in terms of rule 73(3).

3. The first, second and third respondents are hereby interdicted and restrained from implementing the decision taken by the first respondent, alternatively the third respondent, on 16 March 2020, to recall the applicant as a councillor of Oshakati Town Council and to replace her with one Ms Kamwanka.

4. That the status *quo ante* as it prevailed before 16 March 2020 shall remain in place pending the final determination of the relief sought by the applicant in Part B of the notice of motion.

5. Order three (3) above shall operate as an interim interdict with immediate effect, pending the finalisation of the relief sought in Part B of the notice of motion.

6. The matter is postponed to **10 June 2020** at **08h30** for case management hearing.

7. The parties are directed to file a joint case management report on or before 8 June 2020 – setting in particular, how the parties wish to proceed.

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H Angula

Deputy-Judge President

APPEARANCES:

APPLICANT:	H SHIMUTWIKENI Of Henry Shimutwikeni & Co. Inc., Windhoek
FIRST TO THIRD RESPONDENTS:	S S MAKANDO Of Conradie & Damaseb, Windhoek
FOURTH TO SIXTH RESPONDENTS:	J GREYLING Of Greyling & Associates, Oshakati
SEVENTH RESPONDENT:	S KAHENGOMBE Of Office of the Government Attorney, Windhoek