



**HIGH COURT OF NAMIBIA MAIN DIVISION, WINDHOEK**

**JUDGMENT**

Case no: HC-MD-CIV-APP-ATL-2020/00028

In the matter between:

**SIMON VEZAPI MBAHUMA**

**APPELLANT**

and

**MINISTER OF DEFENCE AND VETERAN AFFAIRS  
VETERAN BOARD CHAIRPERSON**

**1<sup>st</sup> RESPONDENTS  
2<sup>nd</sup> RESPONDENTS**

**Neutral citation:** *Mbahuma v Minister of Defence and Veteran Affairs* (HC-MD-CIV-APP-ATL-2020/00028) NAHCMD 312 (1 July 2021)

**Coram:** PARKER AJ

**Heard:** 4 June 2021

**Delivered:** 1 July 2021

**Flynote:** Appeal – In terms of the Veterans Act 2 of 2008, s 40 – Appeals Board upholding decision of the Veterans Board in rejecting appellant’s application to be registered as a veteran – Court finding the appeal Board did not misdirect itself on the law and facts, neither did it fail to exercise its discretion judicially – Court, therefore, disinclined to interfere with appeal Board’s findings of fact – Court held that it was unable to interfere with exercise of discretion by the Veterans Appeal

Board because the Appeal Board did not act capriciously or with bias and did not apply the law wrongly – Consequently, court dismissing appeal.

**Summary:** Appeal – In terms of the Veterans Act 2 of 2008, s 40 – Appellant's application to be registered as a Veterans Board was rejected – The appellant placed certain information before the Appeal Board found that appellant's liberation struggle activities did not meet the requirements of 'persistently and consistently' participating in the liberation struggle – Court finding that Appeal Board did not misdirect itself on the law or the facts; neither did it act with caprice or bias, or upon the wrong application of the law – Court disinclined to interfere with decision of the Appeal Board – Consequently, appeal dismissed.

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### ORDER

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1. The Appeal is dismissed.
2. There is no order as to costs.
3. The matter is considered finalized and is removed from the roll.

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### JUDGMENT

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PARKER AJ

[1] Once more we have before us an appeal against the Veterans Appeal Board ('VAB') such appeal which used to come to the court in drips and drags has now become quotidian. Ms Ambunda-Nashilundo represents appellant, and Mr Kadhila the respondents. Both counsel submitted written submissions laced with authorities. I have considered them.

[2] The determination of the appeal turns on very narrow and short compass. It turns on the interpretation of the word 'veteran' as defined in s 1 of the Veterans Act 2 of 2008 ('the Act').

[3] Now, after the appeal has been heard by the Veterans Appeal Board (‘VAB’), the record are no longer with the Veterans Board (‘VB’) but with the VAB (see *Mahomed v Middlewick NO and Another* 1917 CPD 539 at 541), and so, the record this court should consider is the record of the VAB proceedings.

[4] The present appellant placed before the VAB the following, namely, that –

- (a) he used to attend SWANU meeting while at school;
- (b) that he was suspended from school because of SWANU activities;
- (c) that in 1983, he attended a meeting in Soweto, he was later arrested and detained for two days;
- (d) that in 1985, appellant crossed the border to Botswana because South Africa Army wanted to conscript him in the army.
- (e) That he was stationed in Dukwe refugee camp and was involved in the planning of SWANU activities.
- (f) That in 1987, he got a scholarship to study in USA
- (g) The he came back to Namibia in 1993.

[5] Having the appeal, the VAB found that appellants activities during the liberation struggle were not consistency and persistency carried out’. Appellant’s activities were carried out only in 1983, 1985 and 1986. In 1987, appellant got a scholarship to study in USA through his own initiative and not through SWANU. That the suffering appellant is claiming at the hands of apartheid regime was atrocities most Namibians were subjected to and cannot be substantiated.

[6] In *Leonard v Veterans Appeal Board* case No. HC-MD-Civ-APP-ATL-2020/00010 [2020] NAHCMD 488 (26 October 2020) para 8, I had the occasion to define the adverbs ‘consistently’ and ‘persistently’ which are at the centre of VAB’s decision since appellant appears to have relied on s 1, read with s 27 (2) (b), of the Act. In *Leonard*, I said:

‘The adverb “consistently” connotes a happening in the same way and continuing for a period of time; and the adverb ‘persistently’ connotes a determination to do something

despite difficulties and continuing for a long period.’ (See the Concise Oxford English Dictionary, 11<sup>th</sup> ed.)

[7] Having so found, the VAB rejected appellant’s (ie Mbahuma’s) appeal. In *Kamupo v Veterans Appeal Board* case no HC-MD-CIV-APP-ATL-2020/00020 [2021] NAHCMD 46 (17 February 2021) I said the following with regard to the limited nature of an appeal court’s power in an appeal it is seized with:

‘[5] It is trite that a court on appeal will not easily interfere with findings of fact by the lower court or tribunal unless the lower court or tribunal misdirected itself. (*S v Simon* 2007 (2) NR 500 (HC)) I have no good reason to fault the findings of fact by the Board and as confirmed by the Appeal Board. Moreover, it is trite that if the lower court or tribunal has exercised its discretion on judicial grounds and for sound reason, that is, without caprice or bias or the application of the wrong principle, the appellate court will be very slow to interfere and substitute its own decision. (*Paweni v Acting Attorney General* 1985 (3) SA 720 (ZS)). The principle has been applied by the court (see eg *S v Kuzatjike* 1992 NR 70 (HC); *Reuter v Namibia Breweries Ltd* Case No. HC-MD-LAB-APP-AAA-2018-00008 [2018] NAHCMD 20 (8 August 2018)).’

[8] I have applied the interpretation of the key words ‘consistently’ and ‘persistently’ (see para 2 above) to the findings and conclusions therefrom by the VAB. Having done that, hold that the VAB did not misdirect itself; neither can I say that the VAB failed to exercise its discretion on judicial grounds and for sound reasons in the manner explained by the Supreme Court of Zimbabwe in *Paweni v Acting Attorney-General* 1985 (3) SA 720 (ZS). Consequently, I disincline to interfere with the exercise of discretion by the VAB: The VAB did not misdirect itself (*S v Simon*); neither did it fail to exercise its discretion judicially. It did not act capriciously or with bias; neither did it apply the law wrongly. (*Paweni*).

[9] Considering the nature of the matter and parties, I think this is not a case where costs should follow the event. It is fair and reasonable that no costs order is granted against any party.

[10] Based on these reasons, the appeal fails; whereupon, I order as follows:

1. The appeal is dismissed.
2. There is no order as to costs.
3. The matter is considered finalized and is removed from the roll.

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C Parker  
Acting Judge

## APPEARANCES

APPLICANT: L AMBUNDA-NASHILONGO  
Instructed by Kangueehi & Kavendjii Inc., Windhoek

RESPONDENT: F KADHILA  
Of the Government Attorney, Windhoek