

**REPUBLIC OF NAMIBIA**



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

**RULING**

Case No.: HC-MD-CIV-MOT-REV-2019/00475

In the matter between:

**OVEMBANDERU TRADITIONAL COUNCIL**

**1<sup>ST</sup> APPLICANT**

**ALETHA KARIKONDUA NGUVAUVA**

**2<sup>ND</sup> APPLICANT**

and

**MINISTER OF URBAN AND RURAL DEVELOPMENT**

**1<sup>ST</sup> RESPONDENT**

**THE PRESIDENT OF THE REPUBLIC OF NAMIBIA**

**2<sup>ND</sup> RESPONDENT**

**COUNCIL OF TRADITIONAL LEADERS**

**3<sup>RD</sup> RESPONDENT**

**ATTORNEY-GENERAL**

**4<sup>TH</sup> RESPONDENT**

**OVAMBANDERU TRADITIONAL AUTHORITY**

**5<sup>TH</sup> RESPONDENT**

**KILUS NGUVAUVA**

**6<sup>TH</sup> RESPONDENT**

**Neutral Citation:** *Ovambanderu Traditional Council v Minister of Urban and Rural Development* (HC-MD-CIV-MOT-REV-2019/00475) [2021] NAHCMD 343 (22 July 2021)

**Coram:** MASUKU J

**Heard:** 19 October 2020

**Delivered:** 22 July 2021

**Reasons:** 27 July 2021

**Flynote:** Applications and motions — Review of Application for recognition of a Chief – Decision to dismiss the application — Remittal of application to the first respondent to comply with section 5(3) (b) of the Traditional Authorities Act, 2000 — Applicants' *locus standi* — Points of law in limine dismissed — Unreasonable delay in bringing the application — Applicants provided reasonable explanation — The decision was not taken – Minister to consider the application in terms of the Act.

**Summary:** On or about 17 January 2017 the applicants lodged an application for the designation of a chief or head of the Ovambanderu Traditional Council. The applicants after some effluxion of time, correspondence and engagements with the Minister and Attorney-General's chambers along with some other third parties, came to the conclusion that the Minister came to a decision and he was failing to refer the matter to the President. On 19 November 2019 the applicants filed an application for review of what they deemed to be a Ministerial decision in terms of section 5 of the Traditional Authorities Act, 2000. At the time of lodging the application they did not have sight of the entire review record. The record was subsequently filed. The applicants and respondents exchanged their affidavits as required by the rules of court. Several points of law *in limine* were raised by the respondents, which were dismissed. With the points of law *in limine* dismissed with costs, the application for review was ordered to be heard on the merits.

*Held:* that the applicants have the necessary *locus standi* to institute the proceedings in question as they amply demonstrated that they had a direct and substantial interest in the relief sought.

*Held* that: the first applicant, being a voluntary association, is clothed with power to sue and be sued in its own name. To this end, the proceedings instituted, were properly authorised as evidenced by the resolution filed of record.

*Held* further that: in the circumstances, it cannot be said that there was unreasonable delay on the part of the applicants in launching the application for review such as to non-suit the applicants.

*Held*: that the Minister for Urban and Rural Development is the one, who in terms of s 5(1) of the Act, is supposed to make the decision regarding non-compliance, if any, with the provisions of Act in relation to an application for designation. It is thus not the primary duty of the court to deal with these matters, save where there is a decision made by the Minister, which causes dissatisfaction to an interested party.

*Held* that: a decision on the contention that the applicants contravened s 3 of the Act, must be made by the Minister in the course of deciding the application for designation, after considering the facts placed before him.

The points of law *in limine*, were thus dismissed with costs and the matter was ordered to proceed on the merits.

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### ORDER

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1. The points of law *in limine* raised by the respondents are dismissed.
2. The first, second, third and fourth respondents are ordered to pay the costs of the application jointly and severally, the one paying the other to be absolved, consequent upon the employment, of one instructing and one instructed legal practitioner.
3. The matter is postponed to **5 August 2021** at **08:30** for directions regarding the further conduct of the matter.

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## RULING

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### **MASUKU J:**

#### Introduction:

[1] Culture creates a kinship to those who practice the same culture. Article 19 of the Namibian Constitution states that 'Every person shall be entitled to enjoy practise, profess, maintain and promote any culture, language, tradition or religion subject to the terms of this Constitution and further subject to the condition that the rights protected by this Article do not impinge upon the rights of others or the national interest'.

[2] The Traditional Authorities Act, 25 of 2000, ('the Act'), bridges that cultural affinity. In the process some members separate from one group to create another. That is the nature of human relations when settled in groups. These groups too at times seek for the courts to assist them where the law dictates.

#### Relief sought:

[3] The applicants, in their notice of motion, seek for the review, correction and setting aside of the first respondent's decision allegedly dated 29 July 2019, dismissing the application for recognition of a Chief made as per section 5 of the Traditional Authorities Act, 2000 (the Act). The applicant's further seek an order directing the first respondent to comply with section 5(3)(b) of the Act. In the alternative, should all else fail, they seek an order for the court to declare section 5(3) of the Act unconstitutional to the extent that it is in conflict with Articles 19 and 21(1)(e) of the Namibian Constitution.

[4] Lastly, the applicants are asking for costs of suit of one instructing and one instructed counsel.

### The parties in the matter

[5] The first applicant is the Ovambanderu Traditional Council, which is composed of some members of the Ovambanderu community within Namibia. They are 'an association made up of members of the Ovambanderu community who have voluntarily, as a result of certain disputes....decided to establish a separate traditional authority from the Ovambanderu Traditional Authority'.<sup>1</sup> It is important at this point to make clear that this association is not a traditional authority as envisaged by the Act. They seek to establish themselves as an independent traditional authority, save to say they have embarked on the process. The process at this point has taken a 'detour' to this court.

[6] The second applicant is Ms. Aletha Karikondua Nguvauva, the appointed head of the Ovambanderu Traditional Council. The applicants are represented by Mr. Chibwana, assisted by Ms. Hans-Kaumbi.

[7] The first respondent is the Minister of Urban and Rural Development, appointed by the President of the Republic of Namibia in terms of Article 32 (3) (i) (dd) of the Namibian Constitution.

[8] The second respondent is the President of the Republic of Namibia, elected and holding office in terms of Article 28(2) (a) and (b) of the Namibian Constitution.

[9] The third respondent is the Council of Traditional Leaders, established in terms of the Council for Traditional Leaders Act, 1997.

[10] The fourth respondent is the Government Attorney of the Republic of Namibia. No particular relief is sought against the fourth respondent. The first to fourth respondents' address for service is the Government Attorney, second floor, Sanlam Centre, Windhoek. The first to fourth respondents are represented by Mr. Diedericks, assisted by Ms. Tjahikika.

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<sup>1</sup> Applicant's founding affidavit paragraph 1, deposed to by Mr Erastus Kahuure, a senior chief of the Ovambanderu Traditional Council.

[11] The fifth respondent is the Ovambanderu Traditional Authority established in terms of the Traditional Authorities Act, 2000, with its principal office at Omaozonjanda, Epukiro, district of Gobabis, Namibia. The fifth respondent has not filed any papers in relation to the application under consideration.

[12] The sixth respondent is Chief Kilus Nguvauva, of the Ovambanderu Traditional Authority and the community thereunder, residing at number 2950 Gelykenis Street, Katutura, cited in his official capacity as Chief. No particular relief is sought against him, neither has he filed any papers in relation to this application.

#### The basis of the application

[13] Mr. Erastus Kahuure deposed to the founding affidavit of the applicants. He narrates that the Ovambanderu Traditional Council resolved to bring the application. The Ovambanderu Traditional Council will be referred to as the Council. He re-counts that the Ovambanderu community had one Paramount Chief, the late Munjuku Nguvauva. After the Paramount Chief's death, two factions emerged both vying for the throne. The one group is led by the current Chief of the Ovambanderu Traditional Authority, Chief Kilus Nguvauva, the sixth respondent.

[14] The other faction chose the late Keharanjo Nguvauva II. The matter led to litigation before the courts of this land. I must pause here to state that the late Kekaranjo Nguvauva II passed on before the conclusion of the litigation, and his death settled the dispute to the throne. (See *Nguvauva v Minister of Regional and Local Government Housing*<sup>2</sup>).

#### Background and review record

[15] The record of review pages 23 – 26 indicates an exchange of correspondence in the year 2014, concerning an application for the designation of Omuara Aletha

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<sup>2</sup> *Nguvauva v Minister of Regional and Local Government Housing* (A 254/2010) [2014] NAHCMD 290 (2 October 2014).

Karikondua Nguvauva as Paramount Chief of the Ovambanderu Traditional Authority. On 16 of December 2014, the then Attorney-General advised the then Minister of Regional, and Local Government, Housing and Rural Development Mr. Charles Namoloh that entertaining the application would border on contempt of court. (See *Nguvauva v Minister of Regional and Local Government Housing*, (*supra*).

[16] The applicants state that they submitted a new application for decision to the then incumbent Minister dated 17 January 2017<sup>3</sup>. This was followed by a meeting held on 19 April 2017. The then Minister of Urban and Rural Development Ms. Sophia Shaningwa was in attendance as well as the deponent to the founding affidavit, Mr. Erastus Kahuure. An extract of the minutes reads as follows:

'The Minister referred them to the letter from her predecessor Hon. Charles Namoloh dated 28 January 2015 on the same matter and on the legal advice from the Attorney General which reads: "The Ministry therefore cannot entertain another application for the designation of another Chief for the Ovambanderu Traditional Community to wit: the application by Omuara Aletha Nguvauva, as to entertain such would be to border on contravention and defiance of an order of court and could render the Minister liable for contempt of court. The minister advised the two delegates to go back to their community and to inform them that the matter has a legal implication and that it needs to be taken up with the court by themselves through the court appeal" <sup>4</sup>

[17] On 13 April 2018, Mr. Erastus Kahuure wrote to the Vice President pertaining to a meeting held on 8 March 2018. The letter is titled: "Application for the designation of Queen Aletha K. Nguvauva as Paramount Chief of the Ovambanderu Traditional Council and its recognition". The purpose of the letter was to enquire about a follow-up discussion to resolve the matter, which was said to be overdue.

[18] On 18 May 2018, the Vice President, Mr. Nangolo Mbumba, sent an invitation to then Minister of Rural and Urban Development, Dr. Peya Mushelenga to attend a consultative meeting concerning "Invitation to attend consultative meeting – Application to designate a Paramount Chief of the Ovambanderu Traditional Council". The meeting was

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<sup>3</sup> Page 27 of the record

<sup>4</sup> Page 33 - 34 of the review record.

scheduled for 13 June 2018. On 28 May 2018 the then Minister Mushelenga wrote to Vice President Mbumba, to confirm his availability and attendance. It is important to note that the minutes of the meeting were not produced, neither do they form part of the review record.

[19] On 15 May 2019, Mr. Edward Hauanga, advisor to the Ovambanderu Traditional Council wrote to Minister Mushelenga, concerning the consultative meeting with Mr. Erastus Kahuure on the approval of the application for the designation a chief or head of a traditional community – application of the Ovambanderu Traditional Council.

#### The grounds for review

[20] The applicants filed their founding affidavit without having sight of the review record. Accordingly, a supplementary affidavit was filed and combined in summary the grounds for review which appear as follows:

- (a) The Minister acted in violation of the principle of legality by failing to provide advice to the President in terms of section 5(3) (b) of the Act;
- (b) The Minister failed to apply his mind to the application that served before him for decision;
- (c) Applicants were denied a hearing when fifth respondent lodged representations to the Minister pertaining to the applicants' application for designation;
- (d) The Minister's decision is not rationally connected to section 5(3), (4), (5) and (6) of the Act.

#### Opposition to the application

[21] The first to fourth respondents filed strong opposition to the relief sought by the applicants. In their opposition, several points of law in *limine* have been raised, which



points of law must first be determined by the court before anything else. For the benefit of understanding the pillars of the applicants' application and the respondents' opposition, it is important to have regard to the relevant portions of section 5 of the Act, which reads as follows:

**'Prior notification of designation of chief or head of traditional community**

5. (1) If a traditional community intends to designate a chief or head of a traditional community in terms of this Act –

(a) the Chief's Council or the Traditional Council of that community, as the case maybe; or

(b) if no Chief's Council or Traditional Council for that community exists, the members of that community who are authorised thereto by the customary law of that community, shall apply on the prescribed form to the Minister for approval to make such designation, and the application shall state the following particulars:

- (i) The name of the traditional community in question;
  - (ii) the communal area inhabited by that community;
  - (iii) the estimated number of members comprising such community;
  - (iv) the reasons for the proposed designation;
  - (v) the name, office and traditional title, if any, of the candidate to be designated as chief or head of the traditional community;
  - (vi) the customary law applicable in that community in respect of such designation;
- and
- (vii) such other information as may be prescribed or the Minister may require.

(2) On receipt of an application complying with subsection (1), the Minister shall, subject to subsection (3), in writing approve the proposed designation set out in such application.

(3) Notwithstanding subsection (2), if in respect of an application referred to in subsection (1) the Minister is of the opinion that –

- (a) (i) the person sought to be designated as a chief or head of a traditional community represents a group of persons who are members of a traditional community in respect of which a chief or head of a traditional community has been designated and recognised under this Act; or
- (ii) such group of persons do not constitute an independent traditional community inhabiting a common communal area detached from another traditional community; or
- (iii) such group of persons do not comprise a sufficient number of members to warrant a traditional authority to be established in respect thereof, and
- (b) that there are no reasonable grounds for recognizing such group of persons, as a separate traditional community,  
the Minister shall advise the President accordingly.
- (4) The President shall on receipt of the Minister's advice under subsection (3) refer the matter to the Council of Traditional Leaders for its consideration and recommendation.
- (5) The Council of Traditional Leaders shall submit to the President any recommendation it may wish to make in respect of any matter referred to it in terms of subsection (4) not later than 12 months after the date of referral of that matter to it.
- (6) On -
- (a) receipt of a recommendation referred to in subsection (5); or
- (b) failure of the Council of Traditional Leaders to make such recommendation within the time frame prescribed by that subsection, the President shall in his or her discretion and in writing, either reject the proposed designation on any of the grounds mentioned in subsection (3)(a) or (b), or grant approval for such designation to the members of the traditional community in question.'

[22] I now turn to deal with the points of law *in limine* raised by the respondents in their answering affidavits.

Locus standi in respect of the first applicant, second applicant and the authority to bring the application

[23] The challenge of the *locus standi* of the first and second applicants' application, and the authority to institute these proceedings are interconnected as will become evident below. They will therefore be dealt with together.

[24] The respondents contend that the first applicant's composition as per its constituent document (its constitution), the purported establishment of a traditional authority, is in conflict with section 2(1) of the Act. The first applicant is not a traditional authority for purposes of the Act and lacks the necessary legal standing to institute the application.

[25] The respondents further state that there are no grounds to explain how the second applicant is clothed with the requisite legal standing to institute the application on behalf of the first applicant in her capacity as its head. As such, it is contended that the second applicant lacks authority to institute the application on behalf of the Council. The respondents in addition state that the second applicant does not state that she institutes the 'action' in her personal capacity as an aggrieved person. Further, the respondents contend that the applicants' resolution to institute the application before this court is prohibited by section 3(4) of the Act.

[26] Mr. Diedericks argued that the applicants have the onus of establishing *locus standi*, in that they have a direct interest in the matter and that they are entities bearing rights. He referred the court to the case of *The Council of the Itireleng Village v Madi Felix*<sup>5</sup>. Are the applicants acting in conflict with the Act? Do the applicants lack standing as contended?

[27] Section 2(1) of the Act reads as follows:

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<sup>5</sup> *The Council of the Itireleng Village v Madi Felix* SA 21/2016 [2017] NASC (25 October 2017).

'Establishment of traditional authorities

2. (1) Subject to this Act, every traditional community may establish for such community a traditional authority consisting of-
- (a) the chief or head of that traditional community, designated and recognized in accordance with this Act; and
  - (b) senior traditional councillors and traditional councillors appointed or elected in accordance with this Act.
- (2) A traditional authority shall in the exercise of its powers and the execution of its duties and functions have jurisdiction over the members of the traditional community in respect of which it has been established.

[28] The second applicant filed a replying affidavit, which also covers the issue of *locus standi*. Furthermore, a resolution was also filed in which the executive council of the Ovambanderu Traditional Council resolved to bring proceedings to this court. Mr. Chibwana on behalf of the applicants argues that the founding affidavit sets out the *locus standi* of the Council. He further states that it is a voluntary association clothed as an executive council by its constitution with powers to sue and be sued in its own name. He referred the court in this regard to *Morrison vs Standard Building Society*.<sup>6</sup>, where the court expressed itself as follows:

'In order to determine whether an association of individuals is a corporate body which can sue in its own name, the court has to consider the nature and objects of the association as well as its constitution and if these show that it possesses the characteristics of a corporation or a *universitas* then it can sue in its own name.'

[29] Mr. Chibwana also refers this court to *The Council of the Itireleng Village v Madi Felix supra*. In that case it was accepted at judicial case management that the Itireleng village council was a voluntary association with power to sue and be sued.

[30] The applicants' resolution to bring this application, it is also argued is prohibited as it contravenes section 3(4) of the Act. Section 3(1) and (4) reads:

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<sup>6</sup> *Morrison vs Standard Building Society* 1932 AD 229.

**'Powers, duties and functions of traditional authorities and members thereof**

3. (1) Subject to section 16, the functions of a traditional authority, in relation to the traditional community which it leads, shall be to promote peace and welfare amongst the members of that community, supervise and ensure the observance of the customary law of that community by its members, and in particular to - Republic of Namibia 4 Annotated Statutes Traditional Authorities Act 25 of 2002

- (a) ascertain the customary law applicable in that traditional community after consultation with the members of that community, and assist in its codification;
- (b) administer and execute the customary law of that traditional community;
- (c) uphold, promote, protect and preserve the culture, language, tradition and traditional values of that traditional community;
- (d) preserve and maintain the cultural sites, works of art and literary works of that traditional community;
- (e) perform traditional ceremonies and functions held within that traditional community;
- (f) advise the Council of Traditional Leaders in the performance of its functions as provided under Article 102(5) of the Namibian Constitution, the Council of Traditional Leaders Act, 1997 (Act No. 13 of 1997), or under any other law;
- (g) promote affirmative action amongst the members of that traditional community as contemplated in Article 23 of the Namibian Constitution, in particular by promoting gender equality with regard to positions of leadership; and
- (h) perform any other function as may be conferred upon it by law or custom

(4) Where a traditional authority referred to in section 2(1) has been established for a traditional community, and a group of members of that traditional community establishes in conflict with the provisions of this Act another authority purporting to be a traditional authority for such group, and any member of such last-mentioned authority exercises or performs any of the functions contemplated in paragraphs (b) and (h) of subsection (1) and paragraphs (a) and (b) of subsection

(3) of this section –

- (a) any such act shall be null and void; and

- (b) such member shall be guilty of an offence, and upon conviction be liable to a fine of N\$4 000 or to imprisonment for a period of twelve months or to both such fine and imprisonment.

[31] I am of the considered view that the question whether there is a contravention of s 3 of the Act, is a matter that the Minister should deal with at the stage of an application for designation. The Minister, as the custodian of all the necessary documents relating to designations, maintains all the relevant records and that office is best placed to consider an application for designation and if he or she believes that the application stands in violation of the Act, especially s 3, he or she should say so in his decision as a basis for refusing an application.

[32] The point *in limine on locus standi* presupposes that only traditional communities with traditional authorities designated as such by the Act can invoke provisions of the Act. Does this then mean if certain members of a community create a constitution, create a an executive council, apply for designation in terms of the Act and their application is not dealt with in accordance with the Act as they say, they cannot seek redress? The *pro forma* application on which all applications are to be made by all communities is titled 'Application for approval to designate a chief or head of a traditional community'

[33] Part A reads as follows: The following [application] has to be completed by \*Chief's Council / Traditional Council / Authorised members of traditional community. How will the aforementioned apply if they are not constituted as such? The notion is beyond puzzling. The titles used by the applicants are at the moment used within their circle and appear in their constitution, should that then be a bar when third parties are involved? I think not. It is when their application is considered that a decision can be made.

[34] I am of the considered view that the points of law in limine, namely that of *locus standi* should fail. The applicants have established their interest in these proceedings.

Similarly, the allegation that the proceedings are not authorised, does not have merit as a resolution was filed of record. They are therefor liable to be dismissed as I hereby do.

### Unreasonable delay

[35] The next point of law *in limine* raised by the respondents relates to the application being launched after an unreasonable delay. From the reading of the record, the applicants' application to designate a chief or head of a traditional community is dated 17 January 2017. The respondents contend that it has taken 'an excess of 2 years to institute review proceedings' which they term as unreasonable.

[36] When deciding the issue of unreasonable delay, I agree with Geier J when he said the court should consider 'the overall facts and circumstances of the case' in *Hikumwah v Nelumbu*<sup>7</sup>. In *China State Engineering Construction Corporation v Namibia Airports Company*,<sup>8</sup> Damaseb DCJ reasoned as follows at paragraph 21:

'Whether or not there was an unreasonable delay is a question of fact not involving the exercise of a discretion. The inquiry is a factual one upon which a value judgment is made. If the delay is found to be unreasonable, the court exercises a discretion (as the High Court did) whether or not to condone the unreasonable delay.'

[37] The record is replete with numerous correspondence and engagements from which it appears at one point the application was under consideration and at one another for the respondents, the application had been dealt with by the court. These were not frivolous and constitute genuine engagements as they stretched across all relevant actors for approval of an application to designate a chief or head of a traditional community.

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<sup>7</sup> *Hikumwah v Nelumbu* (A 15/2012) [2015] NAHCMD 111 (13 May 2015).

<sup>8</sup> *China State Engineering Construction Corporation v Namibia Airports Company* SA 28/2019 [2020] NASC (7 May 2020).

[38] The last correspondence is dated 15 May 2019 and the review application was filed on 29 November 2019, the approximate 6 months cannot be termed as unreasonable in the circumstances. The record and the applicants founding, supplementary and replying affidavits sufficiently document the time period leading to the application. I am satisfied that the delay, if be one at all, is sufficiently explained by the applicants and the court is at large to condone the delay in the circumstances.

[39] I accordingly find that the contention that there was an unreasonable delay in the launching of the application is unreasonable, cannot, in the light of the particular circumstances, prevail. It is dismissed accordingly.

#### Non-compliance with s 5(1) of the Act

[40] The respondents had another arrow in their quiver. They raised the point of law to the effect that the court should non-suit the applicants because they failed to comply with the provisions of s 5(1) of the Act. The provisions of this section have been quoted in paragraph 20 above.

[41] I am of the considered view that properly placed in perspective, the provisions of s 5(1) state the various steps and information that they should avail in their application for designation by the Minister. In this regard, the Minister is given power by the section to require further information than that specifically mentioned in the provision.

[42] In this regard, it is clear that the Minister is the authority Parliament authorised to administer the provisions of the Act. The application for designation must be submitted to the Minister. I am accordingly of the view that it is incorrect for the Minister to raise the issue of non-compliance with s 5(1) of the Act and require the court to non-suit the applicants therefor.

[43] The application was made to the Minister and it was on receipt of the application that he should have raised the non-compliance with the provision in question. It is his duty to receive the applications for designation and to make a call if there is non-



compliance as alleged. A party dissatisfied with the Minister's decision, including on the alleged non-compliance with s 5(1), should then approach the court for appropriate relief. It is incorrect that the court should be caused by the Minister to perform his primary function. The court should not be used by the Minister as the cat's paw in this regard.

[44] I am, for the foregoing reasons, of the considered view that this point of law ought to fail. The court cannot be in the coalface of dealing with applications for designation. The Minister is the proper official to deal therewith and he or she should make a decision that he considers appropriate, subject to the decision being escalated to this court on appeal or review, as the case may be.

Costs:

[45] The applicants are seeking for the costs of one instructing and one instructed counsel. The approach to costs is quite trite. Costs follow the event. There is no reason suggested why this position should not be followed in the instant matter. In view of the conclusion reached, it is appropriate to grant costs in the applicants' favour, as I hereby do.

Order:

[46] For the foregoing reasons and considerations, I am of the considered view that the following order is condign in the circumstances:

1. The points of law *in limine* raised by the respondents are dismissed.
2. The first, second, third and fourth respondents are ordered to pay the costs of the application jointly and severally, the one paying the other to be absolved, consequent upon the employment, of one instructing and one instructed legal practitioner.

3. The matter is postponed to **5 August 2021** at **08:30** for directions regarding the further conduct of the matter.

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T. S. Masuku  
Judge

APPEARANCES:

APPLICANTS: T CHIBWANA (with him, A HANS-KAUMBI)  
Instructed by: Ueitele & Hans Incorporated, Windhoek

1<sup>ST</sup> and 4<sup>TH</sup>  
RESPONDENTS: J DIEDERICKS (with him N TJAHIKIKA)  
Instructed by: Government Attorneys, Windhoek

5<sup>th</sup> and 6<sup>th</sup> RESPONDENTS: No appearance