REPUBLIC OF NAMIBIA

HIGH COURT OF NAMIBIA, MAIN DIVISION, WINDHOEK

JUDGMENT

Case No: HC-MD-CIV-MOT-GEN-2019/00458

In the matter between:

MARIA UKAMBA HAINDAKA	**APPLICANT**

and

MINISTER OF URBAN AND RURAL DEVELOPMENT	**FIRST RESPONDENT**
PRESIDENT OF THE REPUBLIC OF NAMIBIA	**SECOND RESPONDENT**
SHAMBYU TRADITIONAL AUTHORITY	**THIRD RESPONDENT**
SOFIA MUNDJEMBE KANYETU	**FOURTH RESPONDENT**
COUNCIL OF TRADITIONAL LEADERS	**FIFTH RESPONDENT**
THIRD RESPONDENT CHIEFS' COUNCIL	**SIXTH RESPONDENT**

Neutral citation: *Haindaka v The Minister of Urban and Rural Development and 5 others* (HC-MD-CIV-MOT-GEN-2019/00458) [2021] NAHCMD 402 (9 September 2021)

Coram: MASUKU J
Heard: **10 February 2021**
Delivered: **9 September 2021**

Flynote: Customary law - Traditional authority – Traditional Authorities Act 25 of 2000, ss 4 to 12 prescribe the mechanisms that are to be followed for a valid

designation of a chief or traditional leader to occur if a traditional community intends having a chief or head of a traditional community to be designed in terms of the Act - Two candidates –failure to comply with s 5(1) – filling in of the prescribed form does not result in a nullity -Traditional authority does not have the authority to refuse to sign an application form when there are two equally qualified candidates – the duty to designate rests with the Minister-Application succeeds.

Summary: The applicant seeks to set aside the third respondent's designation, as Chief of the Shambyu Traditional Community, by the first respondent, the Minister of Urban and Rural Development and Housing.

On 31 October 2019, the applicant received a letter from the Minister, dated 31 October 2019, directing that she, on or before 10 November 2019, rectify the defects in her application for designation dated 21 February 2017, in so far as same pertain to the part completion of portions thereof by the Chief's Council.

The sixth respondent refused to sign the application form and proceed to forward the application form of the other candidate, the fourth respondent, to the Minister for determination and possible designation. The sixth respondent alleges that the form did not meet the requirements of s 5(1) and the Minister alleges that it constituted a nullity, resulting in the Minister designating the 4th respondent, whose form had been signed by the sixth respondent.

Court held: The requirements set out by s 5(1) are readily available to the sixth respondent and it could have easily assisted the applicant in completing the required information instead of refusing to sign the application.

Court further held: that the Minister is not bound by what the sixth respondent wants especially when there are two equally suited candidates. The application succeeds.

ORDER

1. The First Respondent's decision dated 31 October 2019, directing that the Applicant 'rectify the defects in the applications' by 10 November 2019, stands.
2. The First Respondent's decision dated 12 November 2019, approving the Fourth Respondent's application for designation as the Chief of the Fourth Respondent, is hereby reviewed and set aside.
3. This matter is remitted back to the First Respondent to take such decision (s)" in terms of the Traditional Authorities Act, 2000, as he may deem expedient for the resolution of the dispute between the two clans and to further exercise his powers in terms of the Traditional Authorities Act, 2000, to designate a Chief of the third respondent.
4. The Sixth Respondent's decision of 6 November 2019 to decline and or refuse the signing of the applicant's application form for designation as Chief of the Third Respondent, is hereby reviewed and set aside.
5. The Sixth Respondent is directed to, within fifteen (15) days of this order, assist the Applicant in filling the prescribed form mentioned in Section 5 of the Act and to do all that is necessary to enable her to file with the First Respondent, the prescribed form which complies with the formalities mentioned in the Act.
6. Costs are awarded to the Applicant against the Respondents jointly and severally, the one paying the others to be absolved, consequent upon the employment of one instructing and one instructed counsel.
7. The matter is removed from the roll and is regarded as finalised.

JUDGMENT

MASUKU J:

Introduction

[1] The applicant seeks to set aside the third respondent's designation, as Chief of the Shambyu Traditional Community, by the first respondent, the Minister of Urban and Rural Development and Housing.

The Parties and their representation

[2] The applicant, Ms. Maria Ukamba Haindaka, is a member of the Shambyu Traditional Community and resident in Rundu, Namibia. The first respondent is the Minister of Urban and Rural Development, appointed as such in terms of the relevant provisions of the Namibian Constitution ("the Minister"). The first respondent is the custodian of the Traditional Authorities Act, Act No. 25 of 2000 (“the Act").

[3] The second respondent is the President of the Republic of Namibia, duly elected as such in terms of the Namibian Constitution. The third respondent is the Shambyu Traditional Authority, a traditional authority duly established in terms of the Act. The fourth respondent is Ms. Sofia Mundjembwe Kanyetu, a member of the third respondent. The fifth respondent is the Council of Traditional Leaders, a statutory body, established in terms of the Act. The sixth respondent is the Chief's Council of the Shambyu Traditional Authority, the third respondent herein.

[4] The second respondent is cited herein only on account of his powers in terms of section 6(2) of the Act. No relief is sought against him. The fifth respondent is cited herein for the interest that it may have in the outcome of the application, with no specific order sought against it.

[5] The applicant herein is represented by Mr. Muhongo, instructed by Appolos Shimakeleni Lawyers. The first, second, third, fifth and sixth respondents are represented by Mr. Akweenda, instructed by the Office of the Government Attorney. The fourth respondent herein is represented by Mr. Ntinda.

Relief sought

[6] The applicant seeks the following relief in her amended notice of motion dated 17 July 2020:

‘1. An order in terms whereof the first respondent’s decision dated 31 October 2019, directing that the applicant “rectify the defects in the applications” by 10 November 2019, is hereby reviewed and set aside.

2. An order in terms whereof, the first respondent's decision dated 12 November 2019, approving the fourth respondent's application for designation as the Chief of the fourth respondent, is hereby reviewed and set aside.

3. An order in terms whereof this matter is remitted back to the first respondent to "to take such decision (s)" in terms of the Traditional Authorities Act, 2000, "as he may deem expedient for the resolution of the dispute between the two clans" and further exercise his powers in terms of the Traditional Authorities Act, 2000, to designate a Chief of the third respondent.

4. In so far as it is necessary, an order in terms whereof the sixth respondent's decision of 6 November 2019 to decline and or refuse the signing of the applicant's application form for designation as Chief of the third respondent, is hereby reviewed and set aside.

5. An order in terms whereof the respondents electing to oppose this application are (jointly and severally, the one paying the others to be absolved) directed to pay the costs of this application, such costs being the costs of one instructing and one instructed counsel.'

Background

[7] On 14 June 2015, Chief Angelina Matumbo Ribebe of the Shambyu traditional community passed away. Her death triggered a succession dispute within the Vakwankora royal family. There are two royal clans within the Vakwankora royal family from which a successor to the chieftaincy of the Shambyu traditional community may be selected: the Mukwahepo and the Mwengere royal clans. In terms of the Shambyu customary law of succession, it is accepted that chieftaincy follows the matrilineal lineage. The Mukwahepo and the Mwengere are both such matrilineal clans.

[8] The Vakwankora royal family, is made up of two matrilineal clans, the Mukwahepo and the Mwengere. The Mukwahepo clan nominated Ms. Maria Kanyanda, whereas the Mwengere clan nominated the third respondent, Ms. Sofia Kanyetu, for one of them to be designated as a successor to the late Chief Angelina Ribebe. Shortly after her nomination, Ms. Maria Kanyanda, the nominee of the Mukwahepo clan, died on 12 February 2017. Subsequently, the Mukwahepo clan

then nominated the applicant, Ms. Maria Haindaka, as a successor to the late Chief Angelina Ribebe.

[9] Angula DJP, on 19 August 2019,[1] reviewed and set aside the decision communicated to the parties by the Minister in his letter dated 29 June 2018. In this letter, the Minister orders members of the Shambyu traditional community to hold an election to decide the chief to succeed Chief Ribebe. The applicant challenged this decision successfully Angula DJP remitted this dispute back to the minister to take such decision as he may deem expedient for the resolution of the dispute between the two clans.

[10] The decision by the Minister, following the judgment of 19 August 2019, referred to above, is the bone of contention in this matter.

Urgency

[11] During August 2018 the applicant approached the court seeking the relief set out in Parts A and B of the Notice of Motion above. In Part A she sought an order, on urgent basis, interdicting and restraining the first, fourth and fifth respondents from implementing a decision of the Minister to conduct the elections of the Chief (Hompa) of the Shambyu traditional community, scheduled to be conducted on 18 August 2018. Part B related to the review application. The respondents opposed the application. On 21 November 2019 the Court granted the applicant the relief sought in Part A, and the reasons thereof delivered on 9 December 2019.

[12] The court is tasked, in this judgment with the duty to determine Part B of the amended notice of motion. In this regard, the papers filed and the written and oral submissions made by the parties will be taken into account. To the extent necessary, the court will briefly traverse the submissions made by the parties in relation to the issues implicated in Part B of the notice of motion.

The applicant's case

[1] *Haindaka v Minister of Urban and Rural Development* (HC-MD-CIV-MOT-GEN-2018/00254) [2019] NAHCMD 281 (9 August 2021).

[13] On 31 October 2019, the applicant received a letter from the Minister, dated 31 October 2019, directing that she should, on or before 10 November 2019 (the latter date being a Sunday), rectify the defects in her application for designation dated 21 February 2017, in so far as same pertain to completion of blank portions thereof by the Chief's Council.

[14] In line with the Minister's direction, the applicant contends that she, without the requisite legal advice, approached the sixth respondent. She further deposes that had she received legal advice, she would have acted thereon and would thus have appreciated the nature and extent of her rights in terms of the order given by the Minister. Properly advised, she states, she would not have complied with the first respondent's direction to engage the sixth respondent.

[15] The sixth respondent, for reasons contained in its letters dated 04 and 06 November 2019, respectively, addressed to the applicant, refused to attend to the completion of her prescribed form. The aforesaid letters are attached to the founding affidavit and are marked as annexures “HAI 4.1" and "HAI 4.2”, respectively.

[16] The applicant consequently caused a letter to be written to the Minister regarding the sixth respondent's conduct. The letter is attached to the founding affidavit and marked as "HAI 5". The applicant contends that the sixth respondent (and to an extent, the Minister) had been (as exhibited in the previous proceedings herein) partisan and thus leaning towards the fourth respondent's claim bid to become the third respondent's Chief.

[17] In the aftermath of the refusal by the Chief’s Council to sign her form, the applicant engaged the services of her legal practitioners of record. On Friday 8 November 2019, the applicant’s legal practitioners of record addressed and delivered a letter to the Minister and his legal practitioners of record. The letter to the latter, was sent via email on 8 November 2019. The letter to the Minister was hand-delivered on Monday 11 November 2019.

[18] The applicant is adamant that it was not open to the Minister, as he purported to do, to call for new or rectified applications without first having set aside the

decision of 23 January 2017[2], made by the Minister's predecessor, Minister Sophia Shaningwa.

[19] Despite the request in the applicant's letters dated 8 and 12 November 2019, respectively, the Minister, as purported to approve the designation of the fourth respondent as chief of the third respondent, as contemplated in terms of section 5(2) of the Act. It is a matter of record that the first respondent has not responded to applicant's letter of 8 November 2019 to date. The decision of 12 November 2019 as per annexure HAI 7, was also not communicated to the applicant.

[20] This court has on numerous occasions commented adversely against public officials, including Ministers and other Government officials, who do not respond to enquiries or do not write to members of the public regarding the latter's requests or applications.[3] This is to be deprecated and time may come when the court must ensure, on the pain of some sanction, that this pernicious practice does not gain ground and become accepted as normal.

[21] The applicant contends that by making the decision that she seeks to impugn, the first respondent:

> 21.1 failed to properly or at all, apply his mind to the judgment and order of this Court dated 19 August 2019;
>
> 21.2 unfairly, unreasonably and irrationally (contrary to the common law and Article 18 of the Namibian Constitution) failed (contrary to the Act and its import) to protect, promote, preserve, observe and advance the third second respondent's customary law; furthermore

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[2] The Minister's decision dated 23 January 2017 was to the effect that:

'(a) The Vakwankora royal family is afforded an opportunity to resolve their royal family succession issue without involvement of the non-Vakwankora royal family members; (b) If the Vakwankora royal family fail to resolve their succession issue, they must seek assistance from the Kavango East and West Traditional Authorities Regional Forum;(c) The succession dispute should be resolved and finalised within a period of four (4) months from the date of receiving this letter;(d) Should the Vakwankora royal family fail to resolve the succession dispute within the period of four (4) months, elections to select the new Hompa must be held as a last resort, since both candidates are from the female lineage and both are from the maternal family side and hence eligible in terms of the relevant customary law; and(e) Both parties to the dispute should adhere to the above resolution and are welcome to approach the Ministry for clarity with regard to the resolution.'

[3] *Mouse Properties Ninety Eight CC v The Minister of Urban and Rural Development* (HC-MD-CIV-MOT-REV-2018/00173) [2020] NAHCMD 42 (6 February 2020).

21.3 there is a challenge to the composition (constitution and convention) - the sixth respondent was not properly or at all constituted when it made its decision of the third and the sixth respondent's meeting, wherein a decision declining the signing of her application for designation as the chief of the third respondent was taken as not all members of the Chief's Council were engaged or participated in the said decision.

Respondent's case

[22] The Government respondents, for their part, rely on the following documents: the answering affidavits deposed to by the Minister (on 20 November 2019 and 12 August 2020), the answering affidavit deposed to by Mr. Mutero Edward Sikerete and the supporting affidavit of an expert, Mr. Kaputungu Harupe Paulus Haindira.

[23] The said respondents raised three main defences. First, that the Minister complied with the DJP's judgment in the matter *Haindaka v The Minister of Urban and Rural Development* (*supra*). Second, that the applicant's application for the chieftaincy does not comply with the provisions of the Act. Third, the applicant's application does not comply with the customary law of the community.

[24] The Minister contends that when the court remitted the matter back to his office he placed the two applications on his desk, requiring a fresh decision to be taken as per the direction of the court. He emphasised that there are a number of measures, which he may deem expedient and necessary to resolve the dispute.

[25] The Minister quotes Section 5(1) (a) of the Act, which provides that if a traditional community intends to designate a chief or head of a traditional community in terms of this Act, the Chief's Council or the Traditional Council of that community, shall apply on the prescribed form to the Minister for approval to make such designation, and the application shall state the various prescribed particulars under section 5(1).

[26] Furthermore, he further contends, section 5(2) of the Act provides that on receipt of an application complying with sub-section (1), the Minister shall, subject to subsection (3), in writing approve the proposed designation set out in such

application. Section 5(9) (a) provides that if the provisions of subsection 5(1) have not been complied with, the designation of the chief or head of the traditional community concerned shall be invalid. It is therefore mandatory, he finally argues, that any approval of the designation must first comply with the provisions of section 5(1) of the Act.

[27] The Minister emphasised that he did not recall the original applications as alleged by the applicant. The applications originally submitted remained on his desk for consideration, but he had to ensure that they complied with section 5(2) read with section 5(9) of the Act. This would enable him to lawfully be in a position to approve one of the applications. He thus had to ensure that the applications *w*ere completed and submitted by the Chief's Council and not the aspiring chiefs themselves.

[28] In seeking to resolve the dispute declared by the previous minister, and in complying with the direction of court, the Minister states that he therefore deemed it important to give both parties a chance to rectify and ensure that both applications are compliant with the mandatory statutory requirements of section 5(1) and 5(2) read with section 5(9) of the Act. He deemed the rectification necessary as it would enable him make a lawful decision aimed at the expedient resolution of the dispute between the two clans as directed by the court.

[29] The Minister further contends that the decision of 23 January 2019 was only preserved until the stage where there was a proposal by the previous Minister to appoint a committee and hold meetings as well as elections. Since this proposal did not resolve the dispute, no other legal consequences remained from which he had to pick up and continue as the incumbent Minister.

[30] The Minister submitted that he had already made a decision to request the applications to be in compliance with the rule of law, specifically the requirements of section 5(1) of the Act. To give in to the applicant's demands contained in her letter dated 8 November 2019, would not only defeat this purpose, but would also be rendered *functus officio* as he could not revisit and change my his own decision.

[31] The Minister further submitted that he does not have the power to interfere in the decisions of the Chiefs Council nor can he respond on their behalf. He states that

it is incorrect that he never responded to the applicant, as he wrote to the applicant on 12 November 2019 informing her about the decision not to approve her application for designation.[4]

[32] The answering affidavit filed on behalf of the fourth respondent does not differ in material terms with what the Minister contends in his answering affidavit thus alluding to the Ministers affidavit proves sufficient for purposes of this judgment. Mr. Ntinda, for the most part, aligned himself with the approach and argument advanced on the Minister's behalf.

The law applicable

[33] In view of the disparate contentions of the parties, it is appropriate to set out the relevant provisions of the Act relating designation and recognition of a chief. These are contained in sections 4, 5, 6 and 12 of the Act. Specific sub-sections will be referred to as the discussion progresses, as and when they become relevant to the discussion.

[34] Ueitele J, considered these sections extensively in *Kapia v Minister of Urban and Rural Development and Others*[5], as follows:

'30. The first step to be taken to designate a member of a traditional community as a chief is set out in section 4 of the Act. Section 4 is titled "Designation of chief or head of traditional community". Subsection (1) provides that members of a traditional community who are authorized thereto by the customary law of that community, may designate in accordance with that law - (a) one person from the royal family of that traditional community, who shall be instituted as the chief or head, as the case may be, of that traditional community; or (b) if such community has no royal family, any member of that traditional authority'.

[35] Angula DJP, in my opinion settled the issue of who may be nominated/designated and by whom in this matter in the judgment of *Haindaka v*

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[4] See annexure PM7 attached to the Minister's answering affidavit.

[5] *Kapia v Minister of Urban and Rural Development and Other*s (HC-MD-CIV-MOT-REV-2016/00331) [2018] NAHCMD 51 (9 March 2018), page 12-17. Also see *Haindaka v Minister of Urban and Rural Development and Others* 2019 (4) NR 951 (HC) at paras 39-52, pages 16-18.

Minister of Urban and Rural Development and Others, (*supra*), when he stated the following at para 22 to 23:

'I have earlier found that the dispute is between the two clans and not between the two nominees. In my judgment, the death of Ms. Maria Kanyanda did not resolve the dispute between the two clans regarding the rightful or fit and proper person to succeed as the chief of the Shambyu traditional community. The right to nominate a successor vests in the clan and not in an individual. In my view, the Mukwahepo royal clan's right to nominate a successor did not evaporate or disappear with the death of Ms Maria Kanyanda. The Mukwahepo clan's right to nominate a successor survived the death of Ms. Kanyanda. The Mukwahepo clan were entitled to nominate Ms. Haindaka to replace the late Ms. Kanyanda'.

Determination

[36] The main and only issue for determination in this matter is the validity of the actions taken by the sixth respondent by refusing to sign the applicant's form and consequently disqualifying the applicant as a contender for the chieftaincy.

[37] Section 5(1) (a) of the Act, provides that if a traditional community intends to designate a chief or head of a traditional community in terms of this Act, the Chief's Council or the Traditional Council of that community, shall apply on the prescribed form to the Minister for approval to make such designation, and the application shall state the various prescribed particulars under section 5(1) which are:

'(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, Republic of Namibia 6 Annotated Statutes Traditional Authorities Act 25 of 2002 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'. (own underlining)

[38] Considering the requirements of section 5(1) of the Act, I am of the considered view that whatever the defect that presented on the applicant's form could have easily been cured by the sixth respondent. The above requirements and or information that was missing, was readily available to the third respondent. This is particularly so because the sixth respondent is an established traditional community and there would not be anything new required by the form that the third respondent could not have assisted the applicant to fill in.

[39] A question thus presents itself in this matter and it is this – in the light of the sixth respondent refusing to sign the applicant's prescribed form, is the Minister not faced with a *fait accomplii* as to who to designate? Put differently, is the Minister not forced to appoint any person that the Chief's Council wants to be appointed and signified by them signing his or her prescribed form?

[40] The applicant contends that the respondents incorrectly suggest that in terms of the Act, the Minister exercises no discretion in the entire process but designates a Chief whose application is signed by the Chief's Council. The applicant submits that the respondents' approach and interpretation is incorrect. Section 12 provides that the Minister, has the power, when a dispute arises amongst members of a traditional community regarding succession, to make such a decision in terms of the Act as he may deem expedient for the resolution of the dispute between the two clans.

[41] In this case, there is a live dispute between the two clans of the third respondent who are equally entitled to the chieftaincy by the customary law, as they do not agree to the nomination of one candidate. The Minister may resolve the above dispute by exercising his powers under the Act to designate a Chief between or amongst contestants. The Chief's Council is not competent to elect who may be designated as Chief by choosing to sign only one application form.

[42] I am inclined to stand with the submissions made by applicants on the question posed by the court. In terms of the Act the Minister must make the

designation after considering the applications. As it stands there are two applications before the minister. Angula DJP in his judgment (*supra*), made it clear that both the candidates are eligible not only in terms of the law but also the customs of the community.

[43] For the sixth respondent to refuse to sign an application of a nominee for designation on the basis of what they consider an unsuitable candidate, does not find any support in the enabling Act. In doing so, the sixth respondent, impermissibly usurps the powers of the Minister and leaves the Minister with no choice but a *fait accomplii,* which is to designate the person whose form they have signed. This results in the one whose form they refuse to sign, for reasons not given, in the doldrums and falling away from the race for designation.

[44] In this regard, it is imperative that the Minister should not allow such dictation by the sixth respondent. If, as in this case, there are two candidates for designation, the Minister should himself consider each nominee in his or her own right regarding suitability for designation. He or she should not be spoon-fed the 'right' candidate by the sixth respondent choosing to rally behind one of the nominees, thus rendering the 'unpreferred' choice unable to place a compliant form before the Minister for consideration of suitability for designation.

[45] There was a lot of song and dance regarding the propriety of the Minister's action in calling for the rectification, if one can call it that, of the nominees' application forms in view of the judgment of the DJP where he stated unequivocally, that the decision by Minister Shaningwa stands and has to be carried out.[6] He referred to the *Oudekraal* principle to drive the point home. Mr. Muhongo argued that the Minister was thus not entitled to call upon the parties to file reviewed applications that complied with the Act.

[46] As much as I agree with Mr. Muhongo, on his forceful argument, which appears to find support in the judgment, when one considers the executive part of the order by Angula DJP, he ordered the Minister as follows in paragraph 2 of the order:

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[6] Para 68 of the judgment.

'The matter is remitted to the minister to take such decision as he may deem expedient for the resolution of the dispute between the two clans.'

[47] I am of the view that the Minister has complied with the executive part of the DJP's order in dealing with the matter in the manner that he did. At the end of the day, it would seem that the court was concerned, as it should be, with the 'expedient resolution of the dispute' in a manner that the Minister 'deems expedient'. I am of the view that in the circumstances, the Minister may not be faulted, as it was open to the court, in the executive part of its order, to direct the Minister, to comply with the decision made by the erstwhile Minister, Shaningwa. The court did not find it necessary to do so.

[48] The conclusion I have reached above renders it unnecessary to deal with the argument by the respondents that the applicant, by adhering to the Minister's directive to file updated application forms, thereby acquiesced and cannot properly challenge the Minister's decision thereafter. It bears mentioning that for the doctrine of acquiescence to apply, the person involved must know his or her rights and the consequences of abandoning his or her rights. This has not been shown to be the case with the applicant. She was fully entitled to change her mind after receiving legal advice.

Conclusion

[49] In view of the issues discussed above, I come to the conclusion that the Minister had within his rights, the power to call for clarification or more information as the case may be in order for him to reach a just conclusion. As stated in the DJP's judgment, the Minister should always have in mind that the applications are not by the nominees but the clans.[7] They should be considered when adverse decisions are made.

[50] I am also of the considered opinion that the sixth respondent acted outside its powers by refusing to sign the application form of the applicant especially after the judgment by Angula DJP, which is not contested by either party. The Minister was equally not obliged not to consider the applicant's application merely because it had

[7] *Haindaka v Minister of Urban and Rural Development and Others* 2019 (4) NR 951 (HC) at para 87.

not been signed because by doing so, he allowed the sixth respondent to dictate to him who the designee should be in this case. This is impermissible conduct that this court has an abiding duty to review and set aside.

Costs

[51] There exist no factors as to why the ordinary principle applicable to costs should not apply. Thus costs should follow the event, in which case the Respondents are to bear the costs of this application.

[52] In the result the application succeeds in part and it is ordered that:

1. The first respondent's decision dated 31 October 2019, directing that the applicant rectify the defects in the applications by 10 November 2019, stands.
2. The first respondent's decision dated 12 November 2019, approving the fourth respondent's application for designation as the Chief of the fourth respondent, is hereby reviewed and set aside.
3. This matter is remitted back to the first respondent to take such decision (s) in terms of the Traditional Authorities Act, 2000, as he may deem expedient for the resolution of the dispute between the two clans and further exercise his powers in terms of the Traditional Authorities Act, 2000, to designate a Chief of the third respondent.
4. The sixth respondent's decision of 6 November 2019 to decline and or refuse the signing of the applicant's application form for designation as Chief of the third respondent, is hereby reviewed and set aside.
5. The Sixth Respondent is directed to, within fifteen (15) days of this order, assist the Applicant in filling the prescribed form mentioned in Section 5 of the Act and to do all that is necessary to enable her to file with the First Respondent, the prescribed form which complies with the formalities mentioned in the Act.
6. Costs are awarded to the Applicant against the Respondents jointly and severally, the one paying the others to be absolved, consequent upon the employment of one instructing and one instructed counsel.
7. The matter is removed from the roll and is regarded as finalised.

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T.S Masuku

Judge

APPEARANCES

APPLICANT:	T. Muhongo with him L. Ihalwa
Instructed by:	Appolos Shimakeleni Lawyers, Windhoek
1st, 2nd, 3rd, 5th, 6th RESPONDENTS:	S. Akweenda
Instructed by:	Office of the Government Attorney, Windhoek
4th RESPONDENT**:**	M. Ntinda Of Sisa Namandje & Co. Inc., Windhoek