

REPUBLIC OF NAMIBIA



IN THE HIGH COURT OF NAMIBIA, MAIN DIVISION, WINDHOEK

RULING

Case Title: Ndeshihafela Larandja Jurgen Hecht Otilie Saarty Uukule Bernardus Araeb and The Council for the Municipality of Windhoek The Chief Executive Officer for the Municipality of Windhoek The Minister for Urban and Rural Development	Case No: HC-MD-CIV-MOT-GEN-2022/00386 Division of Court: Main Division Heard on: 22 August 2022
	1st Applicant 2nd Applicant 3rd Applicant 4th Applicant 1st Respondent 2nd Respondent 3rd Respondent
Heard before: Honourable Mr Justice Usiku	Delivered on: 22 August 2022 Reasons requested on: 30 August 2022 Reasons released on: 27 September 2022
Neutral citation: <i>Larandja v The Council for the Municipality of Windhoek</i> (HC-MD-CIV-MOT-GEN-2022/00386) [2022] NAHCMD 507 (27 September 2022)	
Order:	
1. The applicants' non-compliance with the forms, service and time-limits prescribed by the rules of this court, is hereby condoned and the matter is heard as an urgent application, as	

envisaged by rule 73 of the rules of this court.

2. The application for an interim interdict is dismissed.
3. The applicants are ordered to pay the costs of the first and second respondents, jointly and severally, the one paying the other to be absolved. Such costs are to include the costs of one instructing and one instructed counsel.
4. The matter is removed from the roll and regarded as finalized.

Reasons for order:

USIKU J:

Introduction

[1] The applicants came before this court with an urgent application on 22 August 2022 seeking an order interdicting the holding of a meeting of the Municipal Council of Windhoek, that was scheduled to take place in the evening of that same day. The applicants sought to persuade the court to issue an interdict in the following terms:

'1 PART A

A.1. That the ordinary rules relating to service and time period be dispensed with and that the application be enrolled as an urgent application in terms of the provisions of Rule 73 (3) of the Rules of the above Honourable Court, condoning the applicants' non-compliance with the forms, procedures and manner for service provided for in terms of the Rules of this Court. Should there be one of the Respondents that is not served by the date of the hearing that such Respondent be served with the interim order together with copies of the application.

A.2. That a rule nisi be issued calling upon the Respondents to show cause, on a date to be determined by this honourable court, why the following order should not be made:

A2.1. That pending the outcome of Part B below, the Respondents are interdicted and restrained from further proceeding with implementing the decision of the Council meeting taken on the 10th and 12th of August 2022, for decision to pass a vote of no confidence in the management committee of the first respondent, as contemplated in Standing Rule 19(1) read with 19(4) of the Standing Rules of the Local Authority Act, 23 of 1992.

A2.2. Such further and/or alternative relief as the Honourable Court may deem appropriate.

A.3. Ordering that the order obtained under A.2.1 above serves as an interim interdict with immediate effect pending the finalization of the relief sought under Part B.

A.4. Costs of suit jointly and severally in respect of any respondent opposing the interim relief sought.'

[2] The application consists of two parts, namely Part A and Part B. In Part A, the applicants seek the above mentioned relief on urgent basis, pending the review application in Part B of the notice of motion.

[3] On the 22 August 2022, the court was only concerned with Part A, as Part B was to be determined at a later stage.

[4] The application is opposed by the first and second respondents.

Issues for determination

[5] This court is called upon to consider whether the applicants' application should be heard on urgent basis. If it is to be heard on urgent basis, the court shall then decide whether the applicants have made out a case for the granting of an interim interdict pending the determination of the main application under Part B of the Notice of Motion.

Urgency

Circumstances that render the matter urgent

[6] The applicants aver that they wish to stop the first respondent from continuing to consider a vote of no confidence in the members of the management committee, pending the determination of Part B of the application. The meeting to consider the vote of no confidence is slated to continue today, the 22 August 2022 unless the interdict is granted. Therefore, the applicants aver that the matter is urgent.

Reason why the applicants claim they could not be afforded substantial redress at a hearing in due course

[7] The applicants claim that their term of office as members of the management committee expires at the beginning of December 2022. Once the first respondent takes a vote on the motion of no confidence on 22 or 23 August 2022, the question of interdictory relief being granted will become moot.

[8] The applicants therefore claim that they will not be afforded substantial redress at a hearing

in due course.

[9] I have considered the issue of urgency as put forth above, especially the assertions made by applicants that all the effort that were taken by, or on their behalf, to stop the consideration of the motion yielded no satisfactory outcome. Having considered the foregoing issue I, hold the view that the applicants have satisfied the requirement of urgency.

[10] I will then proceed to consider the substantive issue of interim interdict. The applicants are required to satisfy the court that they meet the requirements of an interim interdict.

The requirements for an interim interdict

[11] The requirements for an interim interdict are trite and can be briefly summarized as follows:

- (a) a *prima facie* right,
- (b) a well-grounded apprehension of irreparable harm, if the interim relief is not granted,
- (c) that the balance of convenience favours the granting of an interim interdict, and
- (d) lack of another satisfactory or adequate remedy in the circumstances.

[12] In *National Treasury and Others v Opposition to Urban Tolling Alliance and Others 2012 (6) SA 223 CC at p 237 to 238*, the requirement of a *prima facie* right was stated to mean that, an applicant must establish not merely that he has a right to approach a court in order to challenge a particular decision, but such applicant must demonstrate that if not protected by an interdict, irreparable harm would ensue to such a right.

[13] Put differently, apart from the right to launch the application for the relief now sought against the respondents, the applicants are also to demonstrate a *prima facie* right that is threatened by impending or imminent irreparable harm.

[14] The possible harm that the applicants stand to suffer and in respect of which they were able to address the court, is their possible removal from office as members of the management committee. The applicants contend that an unlawful removal from office has implications for such person's reputation and the reputation of the political party or parties they represent, in the eyes of the voting public. The applicants further argue that the vagueness of the allegations forming the basis of the vote of no confidence, make the 'reputational damage' more pronounced.

[15] From the above, it appears that the impending or imminent harm that is apprehended is the 'reputational' harm which would ensue from a possible unlawful removal from the office. There is no explanation offered why the laws that redress damage to reputational harm are not a suitable alternative remedy that could afford the applicants sufficient redress.

[16] It is required of the applicants to adduce facts with sufficient particularity to show that there will be irreparable harm, should the conduct complained of not be stopped.

[17] I find nothing in the applicants' evidence to show:

- (a) the nature of the 'reputational harm' which the applicants apprehend would be suffered;
- (b) the extent of the harm allegedly to be suffered; and
- (c) why it is alleged that the harm would be irreparable.

[18] My conclusion is that the applicant failed to satisfy this court that they stand to suffer irreparable harm if the interim interdict is not granted.

[19] On the issue of balance of convenience, the Constitutional Court of South Africa, made the following apposite observations, which I believe are relevant also to the present case, namely:

'[47] The balance of convenience enquiry must now carefully probe whether and to which extent the restraining order will probably intrude into the exclusive terrain of another branch of Government. The enquiry must, alongside other relevant harm, have proper regard to what may be called separation of powers harm. A court must keep in mind that a temporary restraint against the exercise of statutory power well ahead of the final adjudication of a claimant's case may be granted only in the clearest of cases and after a careful consideration of separation of powers harm. It is neither prudent nor necessary to define "clearest of the cases". However one important consideration would be whether the harm apprehended by the claimant amounts to a breach of one or more fundamental rights warranted by the Bill of Rights...'¹

[20] In my opinion, the present case does not constitute one of 'the clearest case' which the Constitutional Court had in mind. All in all, I am not persuaded that the balance of convenience favour the granting of the interim interdict sought by the applicants.

[21] For the foregoing reasons, I am of the opinion that the applicants have failed to meet the

¹ *National Treasury v Opposition to Urban Tolling Alliance* 2012 (6) SA 223 at 237 B-D.

requirements of an interim interdict. In the premises the application for interim interdict stands to be dismissed.

[22] As regards the issue of costs, the general rule is that costs must follow the result. There is nothing in this matter that warrants a departure from the general rule. I shall therefore grant the first and second respondents their costs.

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

- 1 The applicants' non-compliance with the forms, service and time-limits prescribed by the rules of this court, is hereby condoned and the matter is heard as an urgent application, as envisaged by rule 73 of the rules of this court.
- 2 The application for an interim interdict is dismissed.
- 3 The applicants are ordered to pay the costs of the first and second respondents, jointly and severally, the one paying the other to be absolved. Such costs are to include the costs of one instructing and one instructed counsel.
4. The matter is removed from the roll and regarded as finalized.

Judge's signature:	Note to the parties:
B Usiku Judge	Not applicable
Counsel:	
Applicant(s):	First and Second Respondent:
J Narib, (with him S Kahengombe) Instructed by Kahengombe Law Chambers, Windhoek	E Shifotoka, (with her H Hamunyela) Instructed by Andreas-Hamunyela Legal Practitioners, Windhoek