

REPUBLIC OF NAMIBIA



IN THE HIGH COURT OF NAMIBIA, MAIN DIVISION, WINDHOEK  
RULING

Practice Directive 61

<b>Case Title:</b>	<b>Case No:</b>
Schameerah Seven (7) Reg: CC/2003/1053	HC-MD-CIV-MOT-GEN-2021/00304
Schameerah Four (4) Reg: CC/2003/2211	<b>Division of Court:</b>
Daniel Kudumo	Main Division
Kamunoko ID No: 72120100225	<b>Heard:</b>
Elvis Bongani Ndala	19 September 2022
ID No: 640502 5883 088	
and	
Standard Bank Namibia Limited (Windhoek) Reg: 78/10799	1 <sup>st</sup> Respondent
Directors Of Standard Bank Namibia Limited	2 <sup>nd</sup> Respondent
Chief Executive Officer (CEO) of Standard Bank	3 <sup>rd</sup> Respondent
Nolen Christian Standard Bank Recovery Department	4 <sup>th</sup> Respondent
Dr Weder, Kauta & Hoveka Inc.	5 <sup>th</sup> Respondent
L. Hangula (Only Well Known By Standard Bank)	6 <sup>th</sup> Respondent
John Nujoma Nangola	7 <sup>th</sup> Respondent
Minister Of Justice	

(As The Interested Party)	8 <sup>th</sup> Respondent	
<b>Heard before:</b> Honourable Lady Justice Rakow	<b>Delivered:</b> 10 October 2022	
	<b>Reasons:</b> 11 October 2022	
<b>Neutral citation:</b> <i>Schameerah Seven (7) Reg: CC/2003/1053 v Standard Bank Namibia Limited (Windhoek) Reg: 78/10799 (HC-MD-CIV-MOT-GEN-2021/00304) [2022] NAHCMD 545 (10 October 2022)</i>		
<b>Order:</b>		
<ol style="list-style-type: none"> <li>1. The leave to appeal is granted with no order as to costs.</li> <li>2. The matter is postponed to 15 November 2022 at 15h30 for status hearing.</li> </ol>		
<b>Reasons for order:</b>		
<p>RAKOW J:</p> <p>[1] The fourth applicant on behalf of the second applicant filed an application for leave to appeal after this court dealt with an application by the third and fourth applicants. The latter applicants, who are not legal practitioners, seek leave from this court to represent/act on behalf of the first and second applicants which are close corporations, duly registered in terms of the Close Corporation Laws of the Republic of Namibia. They did so by filing a members request for permission to represent the close corporations on 25 February 2022. The third applicant's application to represent the first applicant in these proceedings was successful as the first applicant only has one member, the third applicant and the court was satisfied that the third applicant was indeed the 'alter ego'<sup>1</sup> of the first applicant or <i>vice versa</i>.</p> <p>[2] The application of the fourth applicant to appear on behalf of the second applicant was however dismissed for the following reasons:</p> <p style="padding-left: 40px;">'However, Mr Elvis Bongani Ndala did not satisfy the court on what his position is with regard to the second applicant, although this court granted him ample opportunity to do so. It is further clear that an applicant in such an application must take the court in its confidence and explain the exceptional</p>		

<sup>1</sup> *Nationwide Detectives and Professional Practitioners CC v Standard Bank of Namibia Limited (SA 32/2007) 2008 (1) NR 290 (SC).*

circumstances that exists that allows for the natural person to represent the closed corporation. In this instance there was not sufficient information placed before this court to allow for a conclusion that there exist exceptional circumstances which necessitate the appearance of a natural person on behalf of an artificial person. The court will not restrict this principle to only one member closed corporations but the court needs to be convinced that the person representing the artificial entity indeed have 'the status and authority which in law makes their acts, intentions and knowledge those of the company so as to treat them as the company itself.' Thus the second respondent is not permitted to be represented by the natural person applicant.<sup>2</sup>

[3] It is against this order that the application for leave to appeal lies.

#### Leave to appeal

[4] The court first needs to decide whether the current order is indeed an appealable order as contemplated in s 18(3) of the High Court Act 16 of 1990. This section reads as follows:

'(3) No judgment or order where the judgment or order sought to be appealed from is an interlocutory order or an order as to costs only left by law to the discretion of the court shall be subject to appeal save with the leave of the court which has given the judgment or has made the order, or in the event of such leave to appeal being refused, leave to appeal being granted by the Supreme Court.'

[5] In deciding whether an order or judgement is appealable, in the *Di Savino v Nedbank Namibia Ltd*<sup>3</sup> matter, Shivute CJ referred to the three attributes that must be present to identify an appealable judgement or order as follows:

'The three attributes counsel for the appellant referred to are those set out in the decision of the South African Appellate Division in *Zweni v Minister of Law and Order 1993 (1) SA 523 (AD)* and as endorsed in many judgments of this court, namely that (i) the decision must be final in effect and not susceptible to alteration by the Court of first instance; (ii) it must be definitive of the rights of the parties, ie. it must grant definite and distinct relief; and (iii) it must have the effect of disposing of at least a substantial portion of the relief claimed in the main proceedings.

<sup>2</sup> *Schameerah Seven (7) Reg: CC/2003/1053 & 3 Others v Standard Bank Namibia Limited (Windhoek) Reg: 78/10799 & 8 Others (HC-MD-CIV-MOT-GEN-2021/00304 [2022] NAHCMD 248 (17 May 2022).*

<sup>3</sup> *Di Savino v Nedbank Namibia Ltd (HC-MD-CIV-ACT 2016-03173) [2017] NAHCMD 61 (8 March 2017).*

Applying the above to the current matter before court, the court finds that the upholding of the special plea in this instance indeed meet the three attributes as set out in the Zweni matter and is therefore an appealable order.'

[6] The next consideration is whether there is a reasonable prospect of success or put differently, whether another court may come to a different conclusion than what this court arrived at.

### Conclusion

[7] Considering the application which was brought, it is clear that the rights of the second applicant will be impacted on with an order that the fourth applicant cannot represent it and as such, it will be left unrepresented. This in turn again affects the rights of the two shareholders, the third and fourth applicants. It is further true that another court might come to a different conclusion regarding the presence of exceptional circumstances for which a case might have been made out by the fourth applicant.

[8] In light of the above, I make the following order:

1. The leave to appeal is granted with no order as to costs.
2. The matter is postponed to 15 November 2022 at 15h30 for status hearing.

<b>Judge's signature</b>	<b>Note to the parties:</b>
E RAKOW Judge	Not applicable
<b>Counsel:</b>	
<b>Plaintiff(s):</b>	<b>First – Third Defendant(s):</b>
Mr Elvis Bongani Ndala Mr Daniel Kudumo Kamunoko (both plaintiffs – in person) Windhoek	Ms M Kuzeeko Of Dr Weder, Kauta & Hoveka Inc. Windhoek