

REPUBLIC OF NAMIBIA



HIGH COURT OF NAMIBIA MAIN DIVISION, WINDHOEK

JUDGMENT

Case no: HC-MD-CIV-MOT-GEN-2023/00131

In the matter between:

NAMIBIA ECONOMIC FREEDOM FIGHTERS

APPLICANT

and

**INSPECTOR GENERAL OF THE NAMIBIAN POLICE
MINISTER OF HOME AFFAIRS, IMMIGRATION,
SAFETY AND SECURITY**

**FIRST RESPONDENT
SECOND RESPONDENT**

Neutral citation: *Namibia Economic Freedom Fighters v Inspector General of the Namibian Police and another* (HC-MD-CIV-MOT-GEN-2023/00131) [2023] NAHCMD183 (11 April 2023)

Coram: RAKOW J

Heard: 20 March 2023

Delivered: 20 March 2023

Reasons: 11 April 2023

Flynote: Urgency – Rule 73(4) – As soon as a case is made out for urgent relief, rule 73(3) comes into play – Court may dispense with the forms and service provided in these rules and dispose of the application in such manner and following such procedure as the court considers fair and appropriate – Peaceful protest earmarked for the 21st of March 2023 – Applicant did not make out a case that the balance of convenience favours the applicant – Applicant must further show that it has no other satisfactory remedy – Application under Part A is dismissed.

Summary: The applicant proceeded and planned a public peaceful demonstration against the high unemployment rate in Namibia. They intended this march to take place on 21 March 2023, which is Namibia's national Independence Day. On 10 March 2023, the applicant issued a notice to the first respondent to have a peaceful national protest against the high unemployment rate in Namibia. This decision was triggered by an event where more than 2400 persons applied for eight vacant positions at a local restaurant.

On 18 March 2023, Mr Amushelelo received a letter dated 17 March 2023 from the first respondent which directed that the proposed demonstration must be rescheduled to any other date. The first respondent explains that consideration is given to article 118 of the Namibian Constitution which mandates the Namibian Police Force to ensure that the internal security of Namibia is thoroughly secured and law and order are maintained without jeopardy. The Inspector-General further explains that taking into consideration the national security interests and the fact that the intended peaceful demonstration is scheduled to take place on 21 March 2023, he has reason to believe that the intended peaceful demonstration may cause feelings of hostility between different sections of the population or may compel any person to abstain from doing an act which such person is legally entitled to do. He then invoked the powers granted to him by section 3(1) of the Public Gatherings Proclamation, AG23 of 1989, and directed the demonstration to take place on any other date.

The applicants sought an order interdicting the first and second respondents not to proceed in any way with the implementation of the decision taken by the first respondent on the 17th of March 2023 and to, with immediate effect, allow the applicant to proceed with the peaceful protest earmarked for the 21st of March 2023

as if the above decision was not made on such conditions as may be imposed by the first respondent. The respondents opposed this application.

Held that: the balance of convenience favours the granting of an interim interdict. The court is of the opinion that the applicant did not make out a case that the balance of convenience favours the applicant.

Held that: the applicant must further show that it has no other satisfactory remedy. The manner in which the current application is drawn up allows for alternative redress in due course. Part B of the current application seeks for the review and setting aside of the decision of 17 March 2023 of the Inspector-General and as such, should be seen as an alternative remedy available to the applicants.

Applicant's application under Part A is dismissed.

ORDER

1. The applicant's non-compliance with the forms and service provided for by this Honourable Court is condoned and the matter is heard as one of urgency as contemplated by rule 73(3) of the rules.
 2. The applicant's application under Part A is dismissed.
 3. The applicant is to pay the respondents' costs, including the costs of one instructed and one instructing counsel.
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JUDGMENT

RAKOW J:

Introduction:

[1] The applicant is the Namibia Economic Freedom Fighters, a political party registered in terms of the laws of the Republic of Namibia, with members in Parliament. It further has a track record in as far as the lobbying for betterment of social conditions and improvement of the welfare of the poor. In their own words

“(t)he applicant is further well renowned for its fearless and revolutionary activism and social pressure mobilization in aiming to better the social conditions of the poor, and disenfranchised across Namibia. The applicant is considered as the voice of many young persons and most particularly disenfranchised persons in Namibia and is particularly revered for his determination to actively engage in social and political activism.”¹

[2] The first respondent is the Inspector-General of the Namibian Police who took the so-called impugned unlawful decision in his capacity as head of the Namibian Police. The second respondent is the Minister of Home Affairs, Immigration, Safety, and Security.

Background

[3] On 21 March of each year is the date on which Namibians celebrate the fact that they successfully fought and attained independence and freedom on 21 March 1990. True words are then also spoken by Mr Amushelelo when he refers to the costs associated with Namibian peoples struggle for Independence in that it is one that is measured in human lives, suffering, endurance, and endeavor and that such costs are incalculable. Namibia has a constitution that recognizes in its preamble that the Namibian nation emerged from a brutal past where its people’s fundamental rights and freedoms were denied and where they resolved to constitute a sovereign, secular, democratic, and unitary state. One of these rights so protected is the right to assemble peaceably and without arms, as provided for under Article 21(1)(d) of the Namibian Constitution. Such rights could only be subject to reasonable restriction in terms of a law which restriction is necessary for a democratic society and meet certain constitutional grounds.

[4] The applicant proceeded and planned a public peaceful demonstration against the high unemployment rate in Namibia. They intend this march to take place on 21 March 2023, which is Namibia’s national Independence Day. On 10 March 2023, the applicant issued a notice to the first respondent to have a peaceful national protest against the high unemployment rate in Namibia. This decision was triggered by an event where more than 2400 persons applied for eight vacant positions at a local restaurant.

¹ Page 3 – 4 founding affidavit.

[5] On 15 March 2023, the applicant and the first respondent met with one another and the applicant was directed to give out further notices to various police stations, everywhere they intend to have the national protest. There were no indication from the first respondent that they had any problem with the upcoming protest and the applicant duly issued notices to the Station Commanders of Katatura police Station and Keetmanshoop police station. This meeting was however denied by the first respondent.

[6] On 18 March 2023, Mr Amushelelo received a letter dated 17 March 2023 from the first respondent which directed that the proposed demonstration must be rescheduled to any other date. The first respondent explains that consideration is given to Article 118 of the Namibian Constitution which mandates the Namibian Police Force to ensure that the internal security of Namibia is thoroughly secured and law and order are maintained without jeopardy. The Inspector-General further explains that taking into consideration the national security interests and the fact that the intended peaceful demonstration is scheduled to take place on 21 March 2023, he has reason to believe that the intended peaceful demonstration may cause feelings of hostility between different sections of the population or may compel any person to abstain from doing an act which such person is legally entitled to do. He then invoked the powers granted to him by section 3(1) of the Public Gatherings Proclamation, AG23 of 1989, and directed the demonstration to take place on any other date.

The relief sought

[7] This application was brought as a part A and B where part A prays for the interim relief and part B for the review of the Inspector-General's decision. It reads as follows:

'TAKE NOTICE that NAMIBIA ECONOMIC FREEDOM FIGHTERS (hereinafter called the applicant) intends to make an application to this court for an order

BE PLEASED TO TAKE NOTICE THAT applicant shall make an application in this Court on the 20 MARCH at 17h00 or as soon thereafter as counsel may be heard, for the following orders:

PART A

1. Condoning the applicant's non-compliance with the Rules of this Court pertaining to time periods and service of the application, as well as giving notice to parties, as contemplated in terms of Rule 73 of the Rules of this Court; and directing the application to be heard on an urgent basis; and 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.
2. An order interdicting the first and second respondents not to proceed in any way with the implementation of the decision taken by the first respondent on the 17th March 2023 and to, with immediate effect, allow the applicant to proceed with the peaceful protest earmarked for the 21st March 2023 as if the above decision was not made on such conditions as may be imposed by the 1st respondent.
3. Ordering that the order obtained under paragraph 2 above serves as an interim interdict with immediate effect, pending the finalization of Part B.
4. Costs of suit jointly and severally in respect of the respondents that are opposing the relief.
5. Further and/or alternative relief.

FURTHER TAKE NOTICE that the founding affidavit of MICHAEL AMUSHELELO shall be used in support of both Part A and B.

FURTHER TAKE NOTICE that the applicant has appointed the offices of Kadhila Amoomo Legal Practitioners., 18 Adler Street, Windhoek-West, Windhoek as the address at which they will accept notice and service of all processes in this application.

FURTHER, TAKE NOTICE that should you wish to oppose the urgent application under Part A, notice to that effect should be given not later than noon 14h00 hours on the 20 MARCH 2023

FURTHER, TAKE NOTICE that answering affidavits (if any) in respect of Part A should be filed not later than 16h00 on 20 MARCH 2023; and the applicant to file its replying affidavit (IF ANY) not later than 16h30 noon on 20 MARCH 2023.

PART B

FURTHER TAKE NOTICE that the applicant intends to make an application to this Court for an order in the following terms:

1. Reviewing and setting aside the decision of the 1st Respondent taken on 17 March 2023 is hereby set aside;
2. Declaring such decision as unlawful, unconstitutional, and invalid;
3. In the event of opposition, directing that the respondents pay the cost of this application jointly and severally.
4. Further and/or alternative relief.

KINDLY place the matter in respect of Part A on the urgent court Roll for hearing on 20TH MARCH 2023 at 17:00 accordingly and that the accompanying affidavit of MICHEAL SADDAM AMUSHELELO will be used in support thereof.

TAKE NOTICE FURTHER that the applicant has appointed Kadhila Amoomo Legal Practitioners of 18 Adler Street, Windhoek West, Windhoek, Khomas Region, Namibia, 9000. at which he or she will accept notice and service of all processes in these proceedings.

TAKE NOTICE FURTHER that if you intend to oppose this application you are required to notify the applicant's legal practitioner in writing within 15 days from the date of service of this application, of your intention to oppose this application, by serving a copy of your intention to oppose on the applicant at the address stated herein and filing the original at the registrar and within 14 days of the service of notice of your intention to oppose, to file your answering affidavits, if any and further that you are required to appoint in such notification an address within a flexible radius from the court, referred to in rule 65(5) at which you will accept notice and service of all documents in these proceedings.

If no notice of intention to oppose is given, the application will be moved on the 20 March 2023 at 17:00 PM.'

The request of the respondents

[8] The legal representative for the respondents requested more time in order for them to prepare and file their opposing affidavits. At 17h00 on 20 March 2023, they had only consulted with one of their clients, who at that stage was out of town. The matter was then postponed to 04h00 on 21 March 2023 for the matter to be heard.

Urgency

[9] Rule 73(4) sets out the requirements for an application to be dealt with on an urgent basis. The applicant, in an affidavit filed in support of an application under subrule (1), must set out explicitly –

- a) the circumstances which he or she avers render the matter urgent; and
- b) the reasons why he or she claims he or she could not be afforded substantial redress at a hearing in due course.

[10] The understanding is that both these averments must be contained in the affidavit of the applicant before a matter can be considered on an urgent basis. This is then also the bridge to cross before the merit of any application will be considered. The logical sequence will be that as soon as a case is made out for urgent relief, rule 73(3) comes into play, and the court may then dispense with the forms and service provided in the rules and dispose of the application in such manner and following such procedure as the court considers fair and appropriate.

[11] In *Beukes t/s a MC Bouers and Others v Luderitz Town Council and Others*² the court said the following regarding these requirements for urgency:

' It is my view that rule 6 (12) of the Rules of Court concerning urgent application must be applied cautiously and sparingly as it tends to violate the constitutionally guaranteed right to a fair trial, particularly Article 12 (1) (a) and (e) of the Namibian Constitution. In my opinion, the essence of rule 6 (12) of the Rules is, therefore, that in the exercise of his or her discretion, it is only in a deserving case that a Judge may dispense with the forms and service provided in the Rules. In terms of rule 6 (12), as I see it, a deserving case is one where the applicant has succeeded – (1) in explicitly setting out the circumstances which the applicant asserts render the matter urgent and (2) in giving reasons why he or she claims he or she could not be afforded substantial redress at the hearing in due course. (Mweb Namibia (Pty) Ltd v Telecom Namibia Ltd Case No.: (P) A 91/2007 (Unreported) where the Court relies on a long line of cases, including the Namibian cases of *Bergmann v Commercial Bank of Namibia Ltd* 2001 NR 48; *Salt and another v Smith* 1990 NR 87.) Thus, in deciding whether the requirements in (1) and (2) of rule 6 (12) have been met, that is, whether it is a deserving case, it is extremely important for the Judge to bear in mind that the indulgence – and indulgence, it is – that the applicant is asking the Court to grant if the Court

² *Beukes t/s a MC Bouers and Others v Luderitz Town Council and Others* (A 388/2009) [2009] NAHC 55 (3 March 2009).

grants it, would whittle away the respondent's right to a fair trial guaranteed to him or her by the Namibian Constitution.'

[12] For purposes of deciding upon the issue of urgency, the court must assume that the applicant's case is a good one and the applicant has a right to the relief it seeks.³

[13] In *Rally for Democracy and Progress and Others v Electoral Commission for Namibia and Others*⁴ this court had to restate the purpose of the rules of court and deal with their application:

[66] The rules of court are devised to further and secure procedures for the inexpensive and expeditious institution, prosecution and completion of litigation in the interest of the administration of justice; to facilitate adjudication of the litigation in a manner that meets the convenience of, and resources available to the court; to allow the litigants an equal, fair and reasonable opportunity to present their respective cases fully for final determination to the court; to accommodate public interest in the efficiency, regularity, orderliness, and finality of the legal process and, finally, to give procedural effect to the constitutional demand that, in the determination of their civil rights and obligations, all persons shall be entitled to a fair and public hearing. . . .

[67] Given the importance of furthering these objectives and interests, there are compelling reasons why the court, as a general rule, would not countenance non-adherence to its procedures in the absence of sufficient cause. The rules, however, "are not an end in themselves to be observed for their own sake. It has often been said, that the rules "exist for the court, not the court for the rules" and that the court will not "become the slave of rules designed and intended to facilitate it in doing justice. It will interpret and apply them, not in a formalistic and inflexible manner, but in furtherance of the objectives they are intended to serve. But, because the rules cannot conceivably be exhaustive and cater for every procedural contingency that may arise in the conduct of litigation, the court may draw on its inherent powers to relax them or, on sufficient cause shown, excuse non-compliance with them to ensure the efficient, uniform and fair administration of justice for all concerned.

³ *Bandle Investments (Pty) Ltd v Registrar of Deeds and Others*, 2001 (2) SA 203 (SECLD), 213 E - I; *Twentieth Century Fox Film Corporation and Another v Anthony Black Films (Pty) Ltd* 1982 (3) SA 582 (W), 586 G, as accepted in *Shetu Trading CC v Chair of the Tender Board for Namibia* 2011 All Nam 171 (HC) at par 7.

⁴ *Rally for Democracy and Progress and Others v Electoral Commission for Namibia and Others* 2014 (4) NR p1176.

[68] What would constitute "sufficient cause" for the court to grant condonation for the non-compliance with the rules in any given instance, must be determined with reference to the facts and circumstances of each case.'

[14] In *Ipinge v Namibia Wildlife Resorts Ltd*⁵, Geier J dealt with an almost similar situation. He concluded that

'Urgent applications should always be brought as far as practicable in terms of the Rules. The procedures contemplated in the Rules are designed, amongst others, to bring about procedural fairness in the ventilation and ultimate resolution of disputes.

[15] And further

Whilst Rule 73(3) allows a deviation from the prescribed procedures in urgent applications, the requirement that the deviated procedure should be 'as far as practicable' in accordance with the Rules constitutes a continuous demand on the Court, parties, and practitioners to give effect to the objective of procedural fairness when determining the procedure to be followed in such instances.'

[16] In this instance, the notice given to the respondents was extremely short. Some two hours. The respondents then requested the court for some additional time to get their papers in order, which request, seen in the light of the short notice, the court granted. The respondents managed to file some papers and the court condoned the mistakes made in these papers seeing the pressure under which it was drawn up. The applicants already knew since Friday 17 March 2023 that their request was denied but chose to come to court on very short notice.

Proclamation AG23 of 1989

[17] The relevant parts of section 2 and 3 of Proclamation AG 23 of 1989, The Public Gatherings proclamation reads as follows:

'Notification of public gatherings

2. (1) Subject to subsections (3) and (4), no person shall hold, preside, or otherwise

⁵ *Ipinge v Namibia Wildlife Resorts Ltd* (HC-MD-LAB-MOT-GEN-2022/00016) [2022] NALCMD 21 (8 February 2022).

officialiate at, or address a public gathering unless he, or another person, has given notice in writing to the commander of the police station nearest to the place where the gathering is to be held of -

- (a) the place and time at which the gathering is to be held;
- (b) the nature of the gathering;
- (c) the person or organisation by or in the name, on behalf or in the interests of whom or which the gathering is to be held; and
- (d) the names and addresses of the persons who will preside and otherwise officiate at and address the gathering.

(2) The notice referred to in subsection (1) shall be handed in duplicate at least three days before the date of the gathering during office hours to the commander referred to in subsection (1), and he shall acknowledge receipt on the duplicate of the notice.

(3) If the notice referred to in subsection (1) is handed to the commander referred to in subsection (1) less than three days before the date of a public gathering, but more than 24 hours before the commencement of the gathering, the commander may, with the concurrence of the Commissioner, authorise the gathering in writing.

(4)...

(5)...

(6)...

3. (1) If the Commissioner has reason to think that -

- (a) the public peace would be seriously endangered;
- (b) the public order would be threatened;
- (c) any person would be killed or seriously injured or valuable property would be destroyed or seriously damaged;
- (d) feelings of hostility between different sections of the population of the Territory would be caused, encouraged or fomented; or
- (e) any person would be compelled to abstain from doing or to do an act which that person is legally entitled to do or to abstain from doing, by or at a particular public gathering or any public gathering of a particular nature, class or kind at a particular place or in a particular area or where so ever in the Territory, he may direct that that particular gathering or any other public gathering with the same purpose, or any public gathering of such a nature, class or kind at that place or in that area or where so ever in the Territory, shall be held only in

accordance with such conditions as he may determine in the direction concerned which are reasonably necessary to prevent any result referred to in paragraph (a), (b), (c), (d) or (e).

(2) When the Commissioner issues a direction under subsection (1) -

(a) he shall do so -

(i) by notice in the Official Gazette;

(ii) by notice in a newspaper circulating where the prohibition is to apply;

(iii) by causing it to be made known by means of radio or television;

(iv) by causing notices to be distributed amongst the public and to be affixed in public or prominent places where the prohibition is to apply; or

(v) by causing it to be announced orally where the prohibition is to apply, whichever manner is, in his opinion, the most suitable in the circumstances of the case to make the conditions known to all persons concerned;

(b) he may, if it is known to him that a particular person is to convene or organise a public gathering to which the direction will be applicable, cause a written notice containing the direction and addressed to that person, to be delivered or tendered to that person.

(3) The Commissioner may at any time in any like manner withdraw or amend a direction issued by him under subsection (1).

(4)...

The notice to hold a protest

[18] The initial notice to the Namibian Police is dated 10 March 2023 and informs the Namibian Police National Headquarters that the NEFF (Namibian Economic Freedom Fighters) intends to have a national protest against high unemployment on 21 March 2023. It explains that the incident of 10 March 2023 where over 2400 Namibians rushed to apply for eight positions at a restaurant paints a picture of the high unemployment rate that we have in Namibia. They further explain that over 1,2 million people are unemployed and as such, it is the biggest contributor to crimes.

[19] The notice proceeds and refers to the alleged current corrupt government, busy preparing to have festivities to celebrate 33 years of high unemployment, high poverty, looting, and alleged mismanaging the country and also deals with the discrepancy between the budget allocation to the office of the President and that allocated to industrialization and trade. The notice then displays the name of

Saddam Amushelelo, who from the reading of the notice, is the Commissar of Economic Development.

[20] Although this notice provides some of the information required, it does not identify the place and time at which the gathering is to be held and the names and addresses of the persons who will preside and otherwise officiate at and address the gathering, although one can assume that it would be the NEFF and their members that would preside over these gatherings.

[21] During a meeting with the offices of the first respondent, the applicants were instructed to issue notices to various police stations responsible for the areas where they intended to have the national protest. They then proceeded and sent two notices, one to the Katatura Station Commander and one to the Keetmanshoop station commander indicating the time and place of these gatherings. Although these notices now had a date and time, they are silent regarding on whose behalf they were issued.

[22] The letter the applicant received from the Inspector-General of the Namibian Police Force dated 17 March 2023 sets out that the Inspector-General considered the security interests and the fact that the protest is to take place on 21 March 2023 and advised the NEFF that under the powers vested in him in terms of section 3(1) (b), (d), and (e), indicates that they are to reschedule the demonstration to any date after the commemoration of the national Independence day as the Namibian Police Force will then be in a position to render the required services to ensure maintenance of law during the intended peaceful demonstrations. The first respondent gives her reasons for this in that taking into consideration the national security interests and the fact that the demonstration is set for 21 March 2021, the Inspector-General has reason to believe that the intended peaceful demonstration may cause feelings of hostility between different sections of the population. These reasons fall within the ambit of the above-mentioned ordinance. Whether they are reasonable, is however to be decided in part B of the application.

Interim relief

[23] The requisites for interim relief are well settled and were neatly summarised in *Hix Networking Technologies v System Publishers (Pty) Ltd*⁶ as follows:

'The legal principles governing interim interdicts in this country are well known. They can be briefly restated. The requisites are:

- (a) a prima facie right,
 - (b) a well-grounded apprehension of irreparable harm if the relief is not granted,
 - (c) that the balance of convenience favours the granting of an interim interdict;
- and
- (d) that the applicant has no other satisfactory remedy.'

[24] In *Nakanyala v Inspector-General Namibia and Others*⁷ in addition to the above principles, it was said that '(t)o these must be added the fact that the remedy is a discretionary remedy and that the court has a wide discretion.'

[25] When considering the legal principles governing interim interdicts, it is clear that the applicant has in fact to make out a prima facie right. This entails on its own averred or admitted facts that the applicant should obtain the final relief it seeks. In *Ferreira v Levin No; Vryenhoek v Powell NO*⁸ the court said the following:

'It has, up to now, been accepted that in order to establish a prima facie right entitling an applicant to an interim interdict, an applicant has to make out a case that he is entitled to final relief. If on the facts alleged by the applicant and the undisputed facts alleged by the respondent, a Court would not be able to grant final relief, the applicant has not established a prima facie right and is not entitled to interim protection.'

[26] The applicants must therefore make out a prima facie right, not only to hold their demonstration but to hold it on 21 March 2023. From the reading of the Constitution and the interpretation of the right to assemble peaceably and without arms as provided for under Article 21(1)(d) of the Namibian Constitution. It further seems that such a right can be exercised on any day of the year and may only be subject to reasonable restriction in terms of a law which restriction is necessary in a democratic society and meet certain constitutional grounds.

⁶ *Hix Networking Technologies v System Publishers (Pty) Ltd* 1997 (1) SA 391 (A) ([1996] 4 All SA 675) at 398 – 399.

⁷ *Nakanyala v Inspector-General Namibia and Others* 2012 (1) NR 200 (HC).

⁸ *Ferreira v Levin No; Vryenhoek v Powell NO*. 1996 (1) SA 984 (CC)

[27] The second requisite is that there must be a well-grounded apprehension of irreparable harm if the relief is not granted. Some authors referred to this requirement as the injury requirement. In Herbstein & van Winsen, *The Civil Practice of the High Courts of South Africa*⁹ they understood injury as follows:

'The word 'injury' must be understood in the wide sense to include any prejudice suffered by an applicant as a result of the infringement of his rights'¹⁰

[28] And further, in Herbstein & van Winsen, the writers said the following about the action: 'When the cause of action giving rise to a claim for an interdict is in delict the plaintiff or applicant must allege and prove facts to show that the conduct of the defendant or respondent which is sought to interdict is wrongful. To decide whether conduct is wrongful in the delictual sense, the court applies the general criterion of reasonableness, which is determined according to the legal convictions of the community. The decision involves policy considerations, and the court has to evaluate and balance the conflicting interests of all concerned parties, with due regard to inter alia the social consequences of recognizing or denying the existence of liability in a given case.'¹¹

[29] In the matter before the court, the Inspector-General explains that because of the date the applicant chose to do the demonstration, 'the police force will not be able to render the required services to ensure maintenance of law and order during the intended peaceful demonstrations.'¹²As such the reason for the actions of the respondents has been stated and it is further essential to the convictions of the community at large to see that demonstrations are held peacefully and orderly with as little as possible damage caused to property and this is ensured by a strong police presence which will be able to stop any rioting even before it starts. The conduct of the respondents is also sanctioned by the duties assigned to the Inspector-General in the Public Gatherings Proclamation.

⁹ *Herbstein & van Winsen; The Civil Practice of the High Courts of South Africa*, 5th ed, Juta.

¹⁰ *Minister of Law and Order, Bophuthatswana v Committee of the Church Summit of Bophuthatswana* 1994 (3) SA 89.

¹¹ *Natal Fresh Produce Growers' Association v Agroserve (Pty) Ltd* 1990 (4) SA 749 (N).

¹² Annexure "MA1" attached to the founding affidavit – letter dated 17 March 2023.

[30] The next element is that the balance of convenience favours the granting of an interim interdict. The discussion of this element is closely related to the discussion above and the court is of the view that the applicant did not make out a case that the balance of convenience favours the applicant.

[31] The applicant must further show that it has no other satisfactory remedy. The manner in which the current application is drawn up allows for alternative redress in due course. Part B of the current application seeks for the review and setting aside of the decision of 17 March 2023 of the Inspector-General and as such, should be seen as an alternative remedy available to the applicants.

[32] Courts have a wide discretion to allow this remedy but also a duty to make sure that any order is made in the interest of justice. The court takes cognisance of the constitutional duty which is assigned to the Inspector-General and the National Police Force in that they are responsible for law and order in the country and as such have certain duties which they need to perform in the event of a demonstration. The court, therefore, accepts that the Inspector-General is performing her duties under the Public Gatherings Proclamation and choose to give permission for the demonstration to proceed on any other day than 21 March 2023.

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

1. The applicant's non-compliance with the forms and service provided for by this Honourable Court is condoned and the matter is heard as one of urgency as contemplated by rule 73(3) of the rules.
2. The applicant's application under Part A is dismissed.
3. The applicant is to pay the respondents' costs, including the costs of one instructed and one instructing counsel.

E RAKOW
Judge

APPEARANCES

APPLICANT: K Amoomo
Of Kadhila Amoomo Legal Practitioners, Windhoek

FIRST AND SECOND
RESPONDENT: E Shifotoko
Office of the Government Attorneys, Windhoek