

# REPUBLIC OF NAMIBIA



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

<b>Case Title:</b>	<b>Case No:</b>
VENDAPII RONALD MARIINE     1st APPLICANT	HC-MD-CIV-MOT-GEN-2023/00073
UEROKORA TJIHARUKA         2nd APPLICANT	<b>Division of Court:</b>
VEZEMBOUUA MARIINE         3rd APPLICANT	High Court (Main Division), Windhoek
V	
THE MINISTER OF SAFETY AND SECURITY 1st RESPONDENT	
INSPECTOR-GENERAL: NAMIBIAN POLICE 2nd RESPONDENT	
STATION COMMANDER TALISMANIS WARRANT OFFICER MUKUAHIMA 3rd RESPONDENT	
<b>Heard before:</b>	<b>Date of hearing:</b>
Honourable Justice Rakow, J	19 April 2023
	<b>Date of reasons:</b>
	10 May 2023
<b>Neutral citation:</b> <i>Mariine and two other v The Minister of Safety and Security</i> <i>(HC-MD-CIV-MOT-GEN-2023/00073 [2022] NAHCMD 247 (10</i> <i>May 2023)</i>	
<b>IT IS HEREBY ORDERED THAT:</b>	
1. The urgent application is struck from the roll due to a lack of urgency with costs.	

2. The matter is finalized and removed from the roll.

**Reasons for orders:**

RAKOW J,

Introduction

[1] The application was initially placed before my brother Ueitele J but he could not hear it due to a conflict of interest. The matter was then postponed to be heard by myself which caused a few of the initial facts to have changed. The first and the second applicants are currently residing in Canada and authorized the third applicant who is the brother of the first applicant to bring this application. The first and the second applicants are part-time farmers, farming at Okamburaso and Otjomombonde Communal Farms in the Okamatapati District. The second applicant farms on Ikatumuamua in the Otjomombonde/Talismanis District. A small portion of the first and third applicants' livestock is kept at the area where the second applicant's livestock is kept. The third applicant is also the primary custodian of all the livestock and is involved in the day-to-day caring for the livestock. The three applicants also each have their own brand marks and registration cards from Meatco.

[2] The first defendant is the Minister of Safety and Security, the second defendant is the Inspector-General of the Namibian police, and the third defendant, is the station commander from the police station at Talismanis, Warrant Officer Mukuahima.

Background

[3] On 19 January 2023, the third applicant received information that there is suspected stolen livestock on farm Ikatumuamua. He sent Mr Ngarahi, the father of the second applicant to attend to the matter. The third respondent confiscated nine of the cattle of the first and second applicants and forced Mr Ngarahi to accompany him to Talismanis. This happened on 22 January 2023. The cattle that were confiscated were five Bonsmara cows and four calves. This seizure took place without a search warrant.

[4] On 26 January 2023, the third applicant arrived at Talismanis Police Station and was questioned. He indicated that the cattle belongs to the first and the second

applicants and that he is responsible for the cattle in the absence of the first and second applicants. Mr Ngarahi was taken by two officers of the Namibian police to further search for livestock at farm Ikatumuamua and the third respondent was told to remain in Talismanis.

[5] The third respondent obtained a search warrant on 7 February 2023 and confiscated a further eleven head of cattle. Among these was a bull worth approximately N\$26 000. The cattle seized in total was nineteen head of cattle. The complaint from the applicants is further that the third respondent released three head of middle-aged calves to an unknown third party as well as allowed one head of cattle to die after calving whilst she was in the care of the respondents. They further attached photographs to the founding affidavit depicting the poor condition in which the animals find themselves in currently.

[6] The Inspector-General in his answering affidavit indicated that the third respondent seized the livestock on a reasonable suspicion of theft of stock and that the applicants were not the lawful owners of all nineteen livestock. A criminal case under Talismanus CR02/02/2013 was opened in relation to these animals. Five of the heads of cattle found at the farm Okatumuamua form part of a stock theft investigation on an Otjiwarongo CR 130/11/22. The initial seizure was carried out after the third respondent received information of alleged stolen stock which was kept at the farm Okatumuamua on 20 January 2023. The information was received from Mr Hoveka a traditional leader.

[7] The Inspector-General also denied that any cattle were donated to a third party but pointed out that these four heifers were identified by the complainants under Trans-Kalhari CR07/02/2023 and Epukiro CR 03/02/2023 and returned to them.

#### Urgency

[8] The cattle were at the time of filing the urgent application, in the care of the respondents for twenty-three days. It is alleged that the third respondent is not providing any daily inspection, water, or feed to the animals while under his custody. This is denied by the respondents. They are further not cordoned off from other animals and are at risk of potential exposure to external parasites. The respondents are also not experts in the

upkeep of livestock and they cannot identify illnesses and render the necessary veterinary treatment. It is submitted that the longer the animals remain in the third respondent's custody the longer and more expensive it will be to bring them back to good health.

[9] It is further pointed out in the founding affidavit that should the livestock perish, not only will the applicants have to sue in the normal course but they would further have to incur additional legal expenses. A non-urgent remedy will therefore be an undue financial burden on the applicants and as such it would be better to prevent a situation than to cure it at a later stage.

#### Requirements for an urgent application

[10] In *Nghiimbwasha and Another v Minister of Justice and Others*<sup>1</sup> the court dealt with the interpretation of the word 'must' contained in rule 73(4) as well as the responsibility of an applicant in a matter alleged to be urgent. Masuku J states further:

'The first thing to note is that the said rule is couched in peremptory language regarding what a litigant who wishes to approach the court on urgency must do. That the language employed is mandatory in nature can be deduced from the use of the word "must" in rule 73 (4). In this regard, two requirements are placed on an applicant regarding necessary allegations to be made in the affidavit filed in support of the urgent application. It stands to reason that failure to comply with the mandatory nature of the burden cast may result in the application for the matter to be enrolled on urgency being refused.

[12] The first allegation the applicant must "explicitly" make in the affidavit relates to the circumstances alleged to render the matter urgent. Second, the applicant must "explicitly" state the reasons why it is alleged that he or she cannot be granted substantial relief at a hearing in due course. The use of the word "explicitly", it is in my view not idle nor an inconsequential addition to the text. It has certainly not been included for decorative purposes. It serves to set out and underscore the level of disclosure that must be made by an applicant in such cases.

[13] In the English dictionary, the word "explicit" connotes something 'stated clearly and in detail, leaving no room for confusion or doubt.' This, therefore, means that a deponent to an affidavit in which urgency is claimed or alleged, must state the reasons alleged for the urgency "clearly and

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<sup>1</sup> *Nghiimbwasha and Another v Minister of Justice and Others* [2015] NAHCMD 67 (A 38/2015; 20 March 2015).

in detail, leaving no room for confusion or doubt". This, to my mind, denotes a very high, honest and comprehensive standard of disclosure, which in a sense results in the deponent taking the court fully in his or her confidence; neither hiding nor hoarding any relevant and necessary information relevant to the issue of urgency.'

### Discussion

[11] In this instance, the applicants must have set out in the founding affidavit, explicitly why they would not get redress in due course. The deponent of the affidavit, the third applicant dealt with that and indicated that there is redress in due course but that such redress holds possible financial implications. He did not elaborate on the financial implications nor did he explain why a suitable cost order coupled with an appropriate court order is not sufficient redress in due course.

[12] For that reason, I make the following order:

1. The urgent application is struck from the roll due to a lack of urgency with costs.
2. The matter is finalized and removed from the roll.

<b>Judge's signature</b>	<b>Note to the parties:</b>
	Not applicable.
<b>Counsel:</b>	
<b>Applicants</b>	<b>Respondents</b>
T Kasita Instructed by Neves Legal Practitioners, Windhoek	Q Fenyeho Of Government - Office of the Government Attorney, Windhoek