

REPUBLIC OF NAMIBIA

HIGH COURT OF NAMIBIA,
JUDGMENT
PRACTICE DIRECTION 61



MAIN DIVISION, WINDHOEK

Case Title: FIDELUS DIYEVE KHANA & OTHERS vs CHIEF OF THE DEFENCE FORCE	Case No: HC-MD-CIV-ACT-OTH-2021/02567
	Division of Court: HIGH COURT (MAIN DIVISION)
Heard before: HONOURABLE MR JUSTICE MILLER AJ	Heard on: 19 – 20 & 22 June 2023
	Delivered on: 21 July 2023
Neutral citation: <i>Khana v Chief of the Defence Force</i> (HC-MD-CIV-ACT-OTH-2021/02567) [2023] NAHCMD 420 (21 July 2023)	
ORDER	
<ol style="list-style-type: none">1. The plaintiffs' claims are dismissed with costs, such costs to be paid by the plaintiffs jointly and severally, the one paying the others to be absolved.2. The matter is finalised and removed from the roll.	
REASONS:	
MILLER AJ <u>Introduction</u>	

[1] This matter proceeded before me by way of action proceedings. During the course of the trial I heard the evidence of the plaintiffs. The defendant tendered no evidence and closed its case. The relevant facts are not in dispute and may be summarised in the following manner:

Relevant facts

[2] The plaintiffs are in the employ in the Ministry of Defence and more particularly in the Human Resources department.

[3] Each of the plaintiffs have either degrees or diplomas which they obtained at tertiary Institutions of Education.

[4] On 29 February 2016 the defendant compiled and circulated a letter to the following effect:

'Approval is hereby granted for the salary adjustments for DHR Military personnel with qualifications as per attached list to be remunerated like their civilian counterparts at other Offices/Ministries/Agency as stipulated in the Reward Management Policy of the OPM and Personnel Administration Measures (PAM) wef 01 March 2016.'

[5] Subsequent thereto and after obtaining advice and by way of a letter dated 6 December 2017, the earlier decision on 29 February 2016 was rescinded.

[6] The reason appears to be that the decision of 29 February 2016 was incorrect and irregular since there had been no prior discussion or approval from the Public Service Commission and the Office of the Prime Minister. This much was confirmed in a further letter dated 28 April 2021.

[7] During the course of the trial the aforesaid irregularities became common cause.

[8] The plaintiffs did not receive any benefits in line with the approvals contained in the letter of 29 February 2016.

The relief claimed

[9] The plaintiffs in their Particulars of claim seek the following relief:

‘1. An order directing that the decision taken by the Defendant on 28 April 2021 be set aside.

2. An order directing that their salaries be adjusted like those of their colleagues with qualifications or alternatively, they be promoted to the rank of lieutenant as is the practice with Lawyers, Nurses and Doctors with Degrees.

3. Back-pay in accordance with the adjusted salaries dating back to the effective date of their transfers to the positions they currently hold.

4. Cost of suit if the matter is defended.

5. Further and/or alternative relief.’

[10] Counsel for the plaintiffs no longer persists with any of the prayers contained in the Particulars of Claim. Counsel conceded, correctly in my view, that the relief claimed is incompetent and if granted will give legitimacy to what remains an illegitimate decision.

[11] Counsel for the plaintiffs instead urged the court to craft orders which will have the effect that the defendant is obliged to take steps to obtain the approvals required.

[12] I am not prepared to grant any such orders. The plaintiffs must stand or fall by their case they tried to make out in their pleadings. Absent any amendment that was the case that the defendant was confronted with and to which it responded. It will be prejudicial to the defendant to now and at this late stage issue orders without any opportunity to respond to the different relief now being sought by the plaintiffs.

[13] I make the following orders:

1. The plaintiffs’ claims are dismissed with costs, such costs to be paid by the plaintiffs jointly and severally, the one paying the others to be absolved.

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

Judge’s signature:	Note to the parties:
	Not applicable.

Counsel:	
Plaintiffs	Defendant
N Enkali of Kadhila Amoomo Legal Practitioners, Windhoek	T Chibwana Instructed by Office of the Government Attorney, Windhoek