

REPUBLIC OF NAMIBIA



HIGH COURT OF NAMIBIA MAIN DIVISION, WINDHOEK

RULING ON WHETHER A PROVISIONAL MAINTENANCE ORDER IS
APPEALABLE

Case no: HC-MD-CIV-APP-AMC-2021/00015

In the matter between:

JOSIAS JACOBUS GROBLER

APPELLANT

and

LIZLE GROBLER

FIRST RESPONDENT

ELLEN VICTORIA GROBLER

SECOND RESPONDENT

**THE EXECUTIVE OF THE MAGISTRATE'S
COMMISSION**

THIRD RESPONDENT

MINISTER OF JUSTICE

FOURTH RESPONDENT

THE MAGISTRATE SWAKOPMUND MS OLIVIER

FIFTH RESPONDENT

Neutral citation: *Grobler v Grobler* (HC-MD-CIV-APP-AMC-2021/00015) [2023]
NAHCMD 518 (21 August 2023)

Coram: ANGULA DJP

Heard: 1 August 2022

Delivered: 21 August 2023

Flynote: Appealability – Section 5(2)(a) of the Reciprocal Enforcement of Maintenance Orders Act 3 of 1995 – Designed to issue provisional maintenance orders against a Namibian person who is liable to maintain a person in Namibia but

such person reside in a designated country – Whether a provisional maintenance order issued in terms of s 5(2)(a) by the Magistrates' Court of Swakopmund is appealable.

Administrative law – The legal principles relating to the doctrine of *functus officio* restated – A person who is vested with adjudicative power or decision-making power may only exercise those power once in relation to the same matter – Once such decision has been made it is final and conclusive; it cannot be revoked or varied by the same decision-maker.

Summary: This is an application for condonation and reinstatement of an appeal against a provisional maintenance order granted by the Magistrate Court of Swakopmund. It, however, came before this court as an inactive case in terms of rule 132(6) whereby the parties were called up to appear before court to show cause why the matter should not be struck from the roll in terms of rule 132(10) and considered as finalised and removed from the roll.

Ms Petherbridge for the appellant deposed to the long history of activities which did not advance the matter further and how the matter ultimately degenerated to a status of an inactive case on the EJustice system. It however transpired that the appellant still wished to prosecute the appeal should he be granted condonation and the appeal was reinstated.

Needless to say, that by then the notice of appeal initially filed during 2021 had long lapsed. Accordingly, an application for condonation for the late filing of the appeal and the reinstatement was necessary. The parties were ordered to exchange the necessary pleadings as well as heads of argument to enable the court to consider the application.

After the heads of argument were filed, it occurred that it was necessary that the issue of the appealability of a provisional maintenance order made by the maintenance court at Swakopmund be determined first before the application for condonation and reinstatement is considered.

The court was of the view that should it be found that a provisional maintenance order is indeed appealable then in that event the court will proceed to hear the application for condonation and reinstatement of the appeal. On the other hand, should it be found that the provisional maintenance order is not appealable then that would be the end of the matter because there would be no prospects of success on appeal which is one of the requirements for granting condonation for leave to appeal.

Counsel were therefore ordered to file supplementary heads of argument addressing the issue of appealability or otherwise of the provisional maintenance order.

Held that: The provisional maintenance order which is the subject matter of the present matter was not made in terms of the Maintenance Act, 2003, but was made in terms of s 5(2)(a) of the Reciprocal Enforcement of Maintenance Orders Act.

Held further that: On a proper reading of the provisions of s 5 of the Reciprocal Enforcement of Maintenance Orders Act, it is clear that the provisional maintenance order is not final but provisional as the description of the order itself suggests.

Held further that: Apart from the description of the order, it is also, clear from the procedure prescribed by s 5 in terms whereof the provisional order is forwarded to a designated country in which the person against whom the order has been provisionally made, resides with a view of it being confirmed by a maintenance court in the designated country.

Held further that: In the present matter the provisional order made by the maintenance court at Swakopmund has been forwarded to the maintenance court at Klerksdorp, in South Africa, which is a designated country awaiting confirmation or remittal to the maintenance court at Swakopmund. It remains a provisional order until and unless it is confirmed.

Held further that: the legislature contemplated that the same court which made the provisional maintenance order should have the power to hear the same matter for the reason that the order it previously made, was provisional in nature in the event such order is not confirmed by the maintenance court in the designated country. In

doing so the court shall take into consideration the contents of the depositions made by witnesses who appeared before the court in the designated country.

Held further that: the fact that the legislature vests the power in the same maintenance court which had previously made a provisional order it considered such order to be provisional for the reason that it was not final and conclusive. Therefore the maintenance court which issued the provisional order does not become *functus officio*, but retains the power to adjudicate upon the maintenance dispute afresh. In doing so taking into account the depositions which were placed before the court in the designated country.

Held further that: the provisional maintenance order being provisional is not appealable.

ORDER

1. The application for condonation and reinstatement is struck from the roll.
2. The applicant is to pay costs of the respondent who opposed the application.
3. The matter is removed from the roll and is regarded as finalised.

JUDGMENT

ANGULA DJP:

Introduction

[1] This application for condonation and reinstatement of an appeal came before me as an inactive case in terms of rule 132(6) whereby the parties were called up to appear before court to show cause why the matter should not be struck from the roll in terms of rule 132(10) and considered as finalised and removed from the roll. In

response to the notice, Ms Petherbridge, for the appellant filed an explanatory affidavit in which she gave a historical background to the current litigation between the parties.

Background

[2] Counsel explained that the applicant, Mr Grobler and the second respondent, Ms Grobler were granted a final order of divorce by this court during August 2007. The custody and control of their daughter, Lize, the first respondent, was granted to Mr Grobler. Lize suffers from mental incapacity arising from a motor cycle accident which took place when she was young. According to the divorce order each of the parties agreed to be 50 percent liable for Lize's day-to-day's expenses of Lize's financial obligations relating to her educational including tertiary expenses, medical expenses, as well as expenses relating to extra mural activities.

[3] Ms Grobler then filed a maintenance claim against Mr Grobler, in the magistrate court of Swakopmund, where she sought a provisional maintenance order in favour of Lize. An inquiry was conducted in the absence of Mr Grobler who is residing in Klerksdorp, South Africa but employed on contract in Yemen. Accordingly, the inquiry was held in terms of s 5 of the Reciprocal Enforcement of Maintenance Orders Act, 3 of 1995 (the 'Act'). At the end of the inquiry on 20 April 2018, the magistrate made a provisional maintenance order in terms whereof Mr Grobler was ordered to pay N\$5000 per month for the maintenance of Lize.

[4] It appears from papers filed of record that during July 2021, the provisional maintenance order was sent to Klerksdorp Magistrate's Office for that court to 'conduct a formal inquiry against Mr Grobler and [thereafter] to send the outcome thereof to Namibia through diplomatic channels'.

[5] On or about 6 August 2021, Mr Grobler's legal practitioner filed a notice of appeal in this court against the magistrate's provisional maintenance order. Ms Petherbridge deposed to the long history of activities which did not advance the matter further and how the matter ultimately degenerated to a status of inactivity on the EJustice system.

[6] As mentioned earlier herein, the matter came before me on 31 January 2023, as an inactive in terms of rule 132(6). It turned out that the appellant still wished to prosecute the appeal should he be granted condonation and his appeal is reinstated. Needless to say that by then the notice of appeal initially filed during 2021 had long lapsed. Accordingly, an application for condonation for the late filing of the appeal and the reinstatement was necessary. I therefore ordered the parties to exchange the necessary pleadings, as well as heads of argument, to enable me to consider the application. The matter was postponed to 14 March 2023.

[7] After the heads of argument were filed and I had had time to peruse the papers, it occurred to me that it was necessary that the issue of the appealability of a provisional maintenance order made by the maintenance court at Swakopmund be determined first before the application for condonation and reinstatement is considered. I was of the view that should it be found that a provisional maintenance order is indeed appealable then in that event the court will proceed to hear the application for condonation and reinstatement of the appeal. On the other hand, should it be found that the provisional maintenance order is not appealable then that would be the end of the matter because there would be no prospects of success of appeal which is one of the requirements for granting condonation for leave to appeal.

[8] I therefore requested counsel on 6 June 2023, to file supplementary heads of argument addressing the issue of appealability or otherwise of the provisional maintenance order. Counsel duly obliged and argued the issue on 1 August 2023. Thereafter, I postponed the matter to 21 August 2023 for delivery of this ruling.

Submissions by the parties

Submissions on behalf of the appellant

[9] Ms Petherbridge, for appellant, relied on s 47 of the *Maintenance Act, 2003* for the submission that a provisional order is appealable 'albeit the reference to the order as a provisional order.'

[10] Counsel further submitted that a further issue to be considered as to whether an order is appealable 'is whether the court a quo was *functus officio* when it made

when it made the order.’ As I understand, counsel intended to say in this regard that the court that made the provisional order become *functus officio*.

[11] Ms Petherbridge therefore submitted that in the present matter, the fifth respondent, the magistrate of Swakopmund is *functus officio* in that ‘she cannot revisit this issue’. In support of her proposition, Counsel referred to case law such as *Adler v The Master of the High Court and Another*¹ where the doctrine of *functus officio* was discussed and explained.

Submissions on behalf of the respondents

[12] Ms Delpont for the respondents, on the other hand, pointed out that counsel for the applicant’s reliance on s 47 of the *Maintenance Act*, is incorrect for the reason that the provisional order which is the subject matter of the present matter was made pursuant to the provision of s 5 of the Act, which regulates its own procedure and thus renders any reliance on the provisions of the *Maintenance Act*, incorrect.

[13] Ms Delpont referred to ss 4 and 5 of s 6 of the Act. Subsection (4) is titled ‘Confirmation of provisional maintenance orders’. In order to provide context, it is necessary to mention ss 6(1) which describes what happens when a provisional maintenance order is received in Namibia from a foreign designated country against a person residing in Namibia. It obliges the maintenance officer who received such provisional maintenance with a view to confirmation of such order to hold an enquiry. Subsection (4) stipulates the type of orders that may be made by the maintenance court holding such inquiry, which may consist of confirmation of the provisional order, remitting the provisional maintenance order to the court which initially made the provisional order; refusing to make any order; and varying or discharging of an order.

[14] As regards ss 5 counsel submitted that that subsection is peremptory in that it provides that a person aggrieved by an order made ‘under this section’ may appeal against such order to the High Court.

¹ HC-MD-CIV-ACT-OTH- 2021/03237.

[15] Counsel referred to in */Ae//Gams Data (Pty) Ltd*², where the three requirements for a judgment or an order to be appealable were set out, namely that the decision must be final; it must be definitive of the rights of the parties; and the decision must have the effect of disposing of at least a substantial portion of the relief claimed in the main proceedings.³

[16] On the basis of those authorities, Ms Delport submitted that a provisional maintenance can be equated to a *rule nisi*, whereby the person against whom such order has been made is granted an opportunity to show cause why the provisional order should not be made final by the maintenance court in the designated country where he or she is residing.

Issues determination

[17] It seems to me that the issues for determination are three fold: first, whether the provisions s 47 of the *Maintenance Act*, are applicable to the facts of the present matter; second, whether the provisional maintenance order is final albeit provisional; and third whether the maintenance magistrate at Swakopmund who made the order is *functus officio*. Before considering the issues it is necessary to set out the relevant applicable statutory provisions.

The Reciprocal Enforcement of Maintenance Orders Act 3 of 1995.

[18] The maintenance court at Swakopmund which made the order on 20 April 2018 made a 'finding' that the 'enquiry was held in terms of the Act, s 5(1)'. The court's order reads:

- '(a) In terms of Section 5(2)(a) of the Reciprocal Enforcement of Maintenance Orders Act, Act 3 of 1995, Section 5(2)(a) a Provisional Maintenance Order is hereby made against the respondent in this instance. Such provisional order for maintenance will be in the amount of N\$5000-00 per month, effective from 30th of May 2018 and following every subsequent month thereafter.'

² */Ae//Gams Data (Pty) Ltd v Sebata Municipality Solution (Pty) Ltd* Case No. A 224 delivered on 21 January 2011.

³ See also *Zweni v Minister of Law and Order* 1993 (1) SA 523 (A) at 536 A-B.

[19] It is therefore necessary to have regard to the relevant provisions of the Act. Section 5(1) of the Act provides that a maintenance enquiry may be held under section 13 of the *Maintenance Act*, in the absence of any person resident in a designated country who may be legally liable to maintain any person in Namibia, provided the evidence of all witnesses at the enquiry read over by or to and signed by such witnesses.

[20] Section 5(2)(a) of the Act in terms of which the enquiry was held by the maintenance court at Swakopmund, is designed to issue provisional maintenance orders against Namibian persons who are liable to maintain a person in Namibia but such persons reside in a designated country. Section 5(2) reads as follows:

'(2) (a) Subject to the provisions of paragraph (c), the maintenance court holding an enquiry contemplated in subsection (1) may only make a provisional maintenance order against a person resident in a designated country and shall, with a view to confirmation of the provisional maintenance order, forward to the Permanent Secretary for transmission to the administrative head of the Department of Justice of that designated country a certified copy of such order, together with the depositions of witnesses and such information as may be available for the identification and location of the person against whom such order has been made.' (Underlining supplied for emphasis)

[21] Subsection 5(3) of the Act provides in part that if the maintenance court in the designated country:

'[R]emits the case for further evidence to the maintenance court which made the provisional maintenance order, that maintenance court shall proceed with the enquiry as if no provisional maintenance order had been made by it and may take into consideration the contents of depositions of witnesses in the court of the designated country before which such order has come for confirmation.'

[22] Section 6(5)(a) of the Act provides that:

'Any person who is aggrieved by an order made under this section may within such period and in such manner as may be prescribed, appeal against such order to the High Court of Namibia.'

The Maintenance Act, No. 9 of 2003

[23] Section 13 of the *Maintenance Act*, mentioned in s 5(1) of the Act prescribes the procedure to be followed at maintenance enquiries held in terms of the Maintenance Act. For ease of reading and completeness' sake it is reproduced in the footnote⁴.

[24] Section 47(1), upon which Ms Petherbridge relies for her submission reads as follows:

'47 Appeals

(1) A person who is aggrieved by any order made by a maintenance court under this Act may, within the prescribed period and in the prescribed manner, appeal against that order to the High Court.' (Underlining supplied for emphasis)

⁴ Maintenance enquiry.

(1) On the date specified in the summons issued under section 12 the maintenance court must enquire into the matter of the complaint.

(2) The enquiry referred to in subsection (1) must be held in the presence of the defendant, or if he or she is absent, on production of proof that the defendant was served with the summons referred to in section 12.

(3) The person presiding at the maintenance court must conduct the maintenance enquiry in a manner that is aimed at ensuring that substantial justice is achieved between the parties as well as the beneficiary of the maintenance claim.

(4) Subject to subsection (5), the Civil Proceedings Evidence Act, 1965 (Act 25 of 1965) in so far as it relates to the admissibility and sufficiency of evidence, the competency, compellability and privileges of witnesses, subject to necessary changes, applies to an enquiry conducted under this Act and any matter relating to the conduct of proceedings at an enquiry which is not provided for in that Act or this Act must be dealt with in accordance with the practice and procedure followed in civil proceedings in a magistrates court.

(5) Section 236 of the Criminal Procedure Act, 1977 (Act 51 of 1977) does, with necessary changes, apply to accounting records and documents of banks produced or to be produced under this Act.

(6) The maintenance court holding an enquiry may at any time during the enquiry cause any person to be summoned as a witness or examine any person who is present at the enquiry, although that person was not summoned as a witness, and may recall and re-examine any person already examined.

(7) Subject to subsection (4), the maintenance court must administer an oath to, or accept an affirmation from, any witness appearing before the maintenance court and must record the evidence of that witness.

(8) Any party to proceedings under this Act has the right to be represented by a legal practitioner.

(9) A person whose presence is not necessary must not be present at a maintenance enquiry, except where that person has been given permission to be present by the maintenance court.

(10) Where a maintenance court considers that it would be in the interests of justice or the interests of any persons who have an interest in the enquiry, it may direct that a maintenance enquiry be held in private at the maintenance court or at a place designated by the maintenance court.

[25] Subsection 6 of s 47 provides as follows with regard to the orders which are appealable under the Maintenance Act:

- '(6) For the purposes of subsection (1) "order"-
- (a) does not include a consent maintenance order referred to in section 18, a default maintenance order referred to in section 19(2) or a provisional order referred to in section 21(3);
 - (b) includes a discharge, confirmation, setting aside, substitution or variation of a maintenance order or of any of the orders referred to in paragraph (a); and
 - (c) includes any refusal to make a maintenance order as well as a refusal-
 - (i) to make a provisional order; or
 - (ii) to make a default maintenance order.'

Discussion

Facts which are common cause

[26] It is common cause that the provisional maintenance order made by the maintenance court in Swakopmund had been forwarded to the maintenance court at Klerksdorp in South Africa for confirmation. South Africa is one of the designated countries in terms of s 2(1) of the Act. It is further common cause that the maintenance court in Klerksdorp took steps with the view to confirm the order and to that end the applicant confirmed in his papers that he appeared before that court with his lawyer. It would appear that the enquiry to be held by the maintenance court at Klerksdorp has been stalled by the outcome of the intended appeal before this court.

[27] I now turn to consider the issues for determination identified earlier.

Whether the provisions of section 47 of the Maintenance Act, 2003 are applicable to the facts of the present matter.

[28] I do not, respectfully, agree with Ms Petherbridge's submission that s 47 of the Maintenance Act, is applicable at all to the facts of the present matter. I say that for the reason that that section deals with appeals against 'any orders made by a maintenance court under this Act'. My understanding of that phrase is that the order to be appealed against must have been made under the Maintenance Act, 2003. The provisional maintenance order which is the subject matter of the present application was not made in terms of the *Maintenance Act*, but was in terms of s 5(2)(a) of the Act. For that reason, the provision of s 47 of the Maintenance Act is not applicable.

[29] Subsection 47(1) provides that a person aggrieved by an order made by a maintenance court 'under this Act' may appeal against that order to the High Court.

[30] The provisional order referred to in s 12(3)(a) and (b) of the Maintenance Act, 2003 relates to scientific tests. Section 12(3)(a) empowers a maintenance court to make a provisional order to the effect that both the mother and the alleged father or that either of them pay or pays part or all of the costs to be incurred in conducting the scientific tests. Section 12(3)(b) empowers the Maintenance Court to make a provisional order directing the State to pay the whole or any part of the scientific tests.

[31] In any event, I could not think of a cogent reason, and none was pointed out to me, why the appeal procedure provided in the *Maintenance Act*, should be followed whereas the Act provides its own appeal procedure under s 6(5)(a)? That section provides that any person who is aggrieved by an order made under this section, may within such period and in such manner as may be prescribed, appeal against such order to the High Court of Namibia. An order which may be appealed in terms of s 6(5)(a) includes a provisional order which has been confirmed by a maintenance court in a designated country.

[32] It is thus clear from the foregoing discussion that the provisional order referred to in s 47(6) of the *Maintenance Act*, is not the same provisional order contemplated by s 5(2)(a) of the Act, 1995. The *Maintenance Act* is simply not applicable. It thus follows that Ms. Delpont is correct in her submission that 'the applicant incorrectly relies on s 47 of the *Maintenance Act*. Accordingly, I hold that the applicant's

argument that section 47 of the *Maintenance Act* is applicable to the facts of the present matter is misconceived and is rejected. I proceed to consider the second issue identified for determination.

Whether the provisional maintenance order is 'final albeit provisional'

[33] On proper a reading of the provisions of s 5 of the Act it is clear that the provisional maintenance order is not final but provisional as the description of the order itself suggests. Quite apart from the description of the order, it is also, in my view, clear from the procedure prescribed by s 5 in terms whereof the provisional order is forwarded to a designated country in which the person against whom the order has been provisionally made, resides with a view of it being confirmed by a maintenance court in the designated country. In the present matter the provisional order made by the maintenance court at Swakopmund has been forwarded to the maintenance court at Klerksdorp, in South Africa, which is a designated country. It is awaiting confirmation or remittal to the maintenance court at Swakopmund.

[34] In my view, should the maintenance order intended to be have been to be provisional as contented by Ms Petherbridge, then the maintenance court in a designated country would be required to summon the person against whom such order has been made to appear before it, in order to hold another inquiry before it could confirm the provisional maintenance order. In other words, if the order was final there would be no need to hold another enquiry by the court in the designated country to confirm a final order. That would be absurd. I am of the considered view that if the provisional maintenance order were to simply be confirmed without the papers initiating the proceedings having been served of the person affected and without hearing the person against whom such order is proposed to be made, such proceedings would have violated well-established principle of natural justice the *audi* principle – hear the other side before you make an order adverse to the rights of that person.

[35] I therefore agree with Ms. Delport's submission that a provisional order issued in terms of s 5 is akin to a *rule nisi* in terms whereof the person liable to pay maintenance is afforded an opportunity to appear before that maintenance court in

the designated country where he or she resides to show cause why the provisional order should not be made final.

[36] Another factor that militates against the notion that a provisional maintenance order is final, is the procedure that is stipulated by ss 3 in the event the maintenance court in the designated country, for whatever reason, does not confirm the provisional order. The subsection provides that, in such event, the order is remitted to the maintenance court that made the provisional order. On the facts of the present matter such remittal would be to the Swakopmund maintenance court.

[37] A further factor which militates against the argument that a provisional order is 'final albeit provisional' is the substance of a provisional order, which according to the definition section of the Act, 'has no effect' until and unless it has been confirmed. In my judgment, the mere fact that the order has no effect means that it is inconsequential to the applicant's rights. It does not affect the applicant's rights. The applicant cannot be said to be an aggrieved person within the meaning of s 6(5)(a) of the Act, which provides that a person aggrieved by a maintenance order which has been confirmed by the maintenance court in the designated country may appeal against such order to the High Court of Namibia. It follows therefore in my view that the fact that a provisional order is not final, is further reinforced by the manner in which it is treated if it has not been confirmed, namely that it is remitted to the maintenance court which initially made it. Upon its receipt the court which initially issued it does not commence where it ended but is required to conduct a fresh enquiry as if no provisional order had ever been made.

[38] In my judgment the fact that the provisional maintenance order has no effect until it is confirmed, demonstrates that it lacks the attributes of finality and consequently it is not appealable. In the present matter, should the provisional maintenance order not be confirmed by the maintenance court at Klerksdorp, the case will be remitted to the maintenance court at Swakopmund to conduct an enquiry afresh. Ms Delpont is thus correct in her submission that the purported appeal by the applicant against the provisional maintenance order is premature. The applicant should wait to lodge his appeal after the maintenance court at Klerksdorp had confirmed the provisional maintenance order in terms of s 6(4)(a) of the Act. Alternatively, in the event the case is remitted to the maintenance court at

Swakopmund after that court has conducted an enquiry afresh and had issued a final maintenance order.

[39] For those reasons and considerations the argument that a provisional maintenance order made in terms of s 5(2)(a) is 'final albeit provisional' is rejected. I turn to consider the issue whether a court that issues a provisional maintenance order is *functus officio*.

Whether a court that issued a provisional maintenance order become functus officio

[40] The legal principles relating to the doctrine of *functus officio* are well-established. According to this doctrine, a person who is vested with adjudicative powers or decision making power may only exercise those power once in relation to the same matter. Once such decision has been made it is final and conclusive; it cannot be revoked or varied by the same decision-maker.

[41] Earlier in this judgment, I referred to the provisions of ss 5(3) which provides *inter alia* that if the court in the designated country remits the case to the court in Namibia which initially made the provisional maintenance order, that maintenance court in Namibia shall proceed with the enquiry as if no provisional maintenance had been made and may take into consideration the contents of the deposition of witnesses made in the court of the designated country.

[42] In my view, what is to be deduced from the wording of ss 3 is that the legislature contemplated that the same court which made provisional maintenance court should have the power to hear the same matter for the reason that the order it previously made, was provisional in nature, in the event such order is not confirmed by the maintenance court in the designated country. In doing so the court shall take into consideration the contents of the depositions made by witnesses who appeared before the court in the designated country. In my considered view, the fact that the legislature vests the power in the same maintenance court which had previously issued a provisional order to an inquiry afresh means that the legislature considered such order as provisional for the reason that it was not final and dispositive of the issue that served before court. As a result that court is not *functus officio*.

[43] In my view, the procedure that is prescribed by the ss 3 namely that the case is remitted to the maintenance court which initially made the provisional maintenance order, is destructive of the applicant's *functus officio* argument. It is clear from provisions of ss 3 that the maintenance court which issued the provisional order does not become *functus officio* but retains the power to adjudicate upon the maintenance dispute afresh. And in doing so it takes into account the depositions which were placed before the court in the designated country.

[44] In view of the reasons and considerations outlined above it follows therefore in my judgment that the doctrine of *functus officio* does not find application in the present matter. Accordingly, the applicant's argument in that respect is similarly rejected.

Conclusion

[45] The conclusion to which I have arrived at is that, the provisional maintenance order made by the maintenance court at Swakopmund on 20 April 2018 and presently before the maintenance court at Klerksdorp, with the view for it being confirmed alternatively being remitted to the maintenance court at Swakopmund for the enquiry to start afresh, is not a final order as it lacks the attributes of a final order. It remains a provisional order until and unless it is confirmed. Such order, being provisional is thus not appealable.

Costs

[46] I see no reason, and none was advanced to me, why the normal rule, that costs follow the result, should not apply in the present matter. Consequently, an order to that effect will be made.

Order

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

1. The application for condonation and reinstatement is struck from the roll.

2. The applicant is ordered to pay the respondents' costs who opposed the application.

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

H ANGULA
Deputy Judge-President

APPEARANCES:

APPELLANT:

M PETHERBRIDGE

Of Petherbridge Law Chambers, Windhoek

FIRST AND SECOND

RESPONDENTS:

A DELPORT

Of Delport Legal Practitioners, Windhoek