

REPUBLIC OF NAMIBIA

HIGH COURT OF NAMIBIA



MAIN DIVISION, WINDHOEK

JUDGMENT

PRACTICE DIRECTION 61

Case Title: ROSA KESEABETSWE SIMANA // MINISTER OF AGRICULTURE, WATER AND LAND REFORM & 2 OTHERS	Case No: HC-MD-CIV-MOT-GEN-2023/00081
	Division of Court: HIGH COURT (MAIN DIVISION)
Heard before: PARKER, AJ	Heard on: 18 OCTOBER 2023
	Delivered on: 15 NOVEMBER 2023
Neutral citation <i>Simana // Minister of Agriculture, Water and Land Reform</i> (HC-MD-CIV-MOT-GEN-2023/00081) [2023] NAHCMD 736 (15 November 2023)	
Order:	
1. The application is dismissed with costs on the scale as between party and party. 2. The matter is finalised and removed from the roll.	
Reasons:	
PARKER AJ: [1] This matter has been around the court since 2018. On 7 February 2020 the court, per Masuku J, delivered a judgment wherein he made the following order, which I shall call the 'Masuku J order': '1. The decision of the Minister of Land Reform, communicated to the Applicant via a letter	

under the land of the Minister, dated 18 December 2017, is hereby declared null and void and of no effect.

2. The matter is remitted to the Minister for him to apply his mind properly to Applicant's objection and to make a decision thereon.

3. The Minister is ordered to pay the costs of the application, consequent upon the employment of one instructing and one instructed legal practitioner.

4. The matter is removed from the roll and is regarded as finalised.'

[2] It has taken the applicant, the executrix of the estate of the late applicant, over three years to launch the present application. In the present application, the applicant has prayed for the following relief:

'1. A Mandamus directing the First Respondent to comply with the court order dated 6 February 2020, by applying his mind properly to the Late Michael Simana's objection dated 23rd of October 2015 and to make a decision within 10 (ten) days of the Court Order.

2. Failure to which the Honourable Court declaring that the First Respondent is in Contempt of Court dated 06th February 2020 and committing him.

3. Further and/or alternative relief.

4. Costs of suit.'

[3] The following basic administrative law principle holds the key to the determination of the instant application. It is this: The rule of law and the principle of legality require that administrative bodies and administrative officials may only act in accordance with powers conferred on them by law – either by the Constitution itself or by any other law.¹

[4] Added to the aforesaid foundational principle is the remedy of mandamus in the judicial review of administrative action. The one effective remedy available to compel a public authority to perform his or her official duty is mandamus; a remedy used to prevent breach of duty and injustice.²

¹ *President of the Republic of Namibia and Others v Anhui Foreign Economic Construction Group Corporation Ltd and Another* 2017 (2) NR 340 (SC) para 49.

² *Nguvauva v Minister of Regional and Local Government and Housing and Rural Development and Others* 2015 (1) NR 220 (HC) para 25.

[5] In the instant proceeding, the applicant has prayed the court to order mandamus against the first respondent, the Minister of Agriculture, Water and Land. It is recalled that mandamus issues compel a public authority to perform his or her duty. In the instant matter, the duty imposed on the first respondent is a judicial one in terms of the Masuku J order.

[6] The first respondent's duty is contained in para 1 of the notice of motion. His duty was to act 'by applying his mind properly to the Late Michael Simana's objection, dated 23 October 2015 and to make a decision.' It cannot be emphasised enough that the first respondent's duty was to apply his mind and make a decision, whether the decision is in the applicant's favour or not.

[7] On the facts, I find, and it cannot be controverted, that the first respondent applied his mind by seeking advice from a statutory body, namely, the Land Reform Advisory Commission ('the Commission'). I find further that the first respondent was entitled to seek advice from such statutory body. I did not hear Mr Nangolo to say that the first respondent was not so entitled.

[8] After seeking the aforementioned advice to the effect that he had no statutory power to act as requested by the applicant, he took a decision in that line. What the Masuku J order commanded him to do was to apply his mind to the question before him and decide. The first respondent has done both. Accordingly, I find that the first respondent's act cannot be faulted. He acted in strict accordance with the Masuku J order. It should be remembered the first respondent could 'only act in accordance with powers conferred on him by law – either by the Constitution itself or by any other law.'³

[9] Upon applying his mind as aforesaid, the first respondent came to the decision that no statute has conferred on him to act as requested by the applicant. He could not act without offending *President of Namibia and Others*. The fact that his predecessor in an affidavit thought that he had the statutory power to act turns on nothing. Oral evidence or affidavit evidence in proceedings is not law: It is not the Constitution or a statute. Oral evidence or affidavit cannot confer powers on an administrative body or official to act. It follows that the affidavit evidence of the first respondent's predecessor cannot in law bind the first respondent.

³ *President of the Republic of Namibia and Others v Anhui Foreign Economic Construction Group Corporation Ltd and Another* footnote 1 loc cit.

[10] In sum, I hold that the first respondent has obeyed the Masuku J order. There is no duty left for mandamus to issue to compel the first respondent to perform.

[11] Based on these reasons, I find that the applicant has failed to make out a case for the relief sought. In the result, I make the following orders:

1. The application is dismissed with costs on the scale as between party and party.
2. The matter is finalised and removed from the roll.

Judge's signature:	Note to the parties:
	Not applicable.
Counsel:	
Applicant	First Respondent
E Nangolo Of Sisa Namandje & Co. Inc., Windhoek	C T van der Smit Of Office of the Government Attorney, Windhoek