

REPUBLIC OF NAMIBIA

HIGH COURT OF NAMIBIA



MAIN DIVISION, WINDHOEK

RULING

PRACTICE DIRECTION 61

Case Title: DR. WEDER, KAUTA & HOVEKA INC. & ANOTHER // NAMIBIA COMPETITION COMMISSION & 2 OTHERS DR. WEDER, KAUTA & HOVEKA INC. // NAMIBIA COMPETITION COMMISSION & 2 OTHERS	Case No: HC-MD-CIV-MOT-REV-2022/00355 HC-MD-CIV-MOT-REV-2022/00357 Division of Court: HIGH COURT (MAIN DIVISION)
Heard before: HONOURABLE MR JUSTICE PARKER, ACTING	To be determined on the papers
	Delivered on: 20 DECEMBER 2023
Neutral citation: <i>Dr. Weder, Kauta & Hoveka Inc. v Namibia Competition Commission</i> (HC-MD-CIV-MOT-REV-2022/00355 / HC-MD-CIV-MOT-REV-2022/00357) [2023] NAHCMD 830 (20 December 2023)	
Order:	
<ol style="list-style-type: none">1. The application for leave to appeal is dismissed with costs, including costs of one instructing counsel and two instructed counsel.2. The leave to appeal application is finalised and removed from the roll.3. Counsel and the parties (if unrepresented) are called upon to attend a status hearing at 08h30 on 7 February 2024 for the court to determine the conduct of the main application.	
Reasons:	
PARKER AJ:	

[1] This is an application for leave to appeal the ruling of the court, dated 4 October 2023 ('the ruling'). In this application, Mr Bhana SC (with him Ms Williams) represents the applicants, and Mr Gotz SC (with him Mr Nekwaya) represents the first respondent.

[2] It becomes necessary at the threshold to determine whether the 4 October 2023 ruling is appealable. If it is not, that is the end of the instant application.

[3] The 4 October 2023 order, which was made on the issue of the production of further documents, is neither final nor definitive of the rights of the parties, and it does not have the effect of disposing of the relief claimed in the main proceeding. Indeed, the order concerned an interlocutory process through and through. Therefore, it is not appealable.¹

[4] The applicants' reliance on *Minister of Finance and Another v Hollard Insurance Co of Namibia Ltd and Others*² is, with respect, misplaced. There, the Supreme Court was seized with deciding whether it was competent for the High Court to stay the implementation of an Act of Parliament and the appealability of the High Court's decision thereon. For the Supreme Court, if the High Court granted an order which it was not competent to grant, such order was appealable. In the instant matter the court was competent to grant the 4 October 2023 order. It follows inevitably that *Minister of Finance and Another v Hollard Insurance Co of Namibia Ltd and Others* is of no assistance on the point under consideration.

[5] Based on these reasons, I cannot grant the applicants' application without offending the authorities. In the result, I order as follows:

1. The application for leave to appeal is dismissed with costs, including costs of one instructing counsel and two instructed counsel.
2. The leave to appeal application is finalised and removed from the roll.
3. Counsel and the parties (if unrepresented) are called upon to attend a status hearing at 08h30 on 7 February 2024 for the court to determine the conduct of the main

¹ Petrus T Damaseb *Court-Managed Civil Procedure of the High Court of Namibia: Law, Procedure and Practice* 1ed (2020) at 218, and the authorities there cited; *Shetu Trading CC v Tender Board of Namibia* 2012 (1) NR 162 (SC) para 19.

² *Minister of Finance and Another v Hollard Insurance Co of Namibia Ltd and Others* 2019 (3) NR 605 (SC).

application.

Judge's signature:	Note to the parties:
	Not applicable.
Counsel:	
Applicants	First Respondent
A R Bhana SC (with him K Williams) Instructed by Nambahu & Associates, Windhoek	A Gotz SC (with him E Nekwaya) Instructed by Kangueehi & Kavendjii Inc., Windhoek