

REPUBLIC OF NAMIBIA



HIGH COURT OF NAMIBIA, MAIN DIVISION, WINDHOEK
JUDGMENT

CASE NO: HC-MD-CIV-ACT-DEL-2021/00670

In the matter between:

| | |
|---|---------------------------------|
| PETRINA HAMWOONGO OBO DUTCHMAN KADHILA | 1ST PLAINTIFF |
| PETRINA HAMWOONGO OBO JOHANNES NGHIHAF | 2ND PLAINTIFF |
| LEONARD NGHIHAF | 3RD PLAINTIFF |

and

| | |
|--|---------------------------------|
| THE GOVERNMENT OF THE REPUBLIC OF NAMIBIA | 1ST DEFENDANT |
| MINISTER OF HOME AFFAIRS, IMMIGRATION | |
| SAFETY AND SECURITY | 2ND DEFENDANT |
| WARRANT OFFICER FRANSISCO | 3RD DEFENDANT |
| SERGEANT SHIKONGO | 4TH DEFENDANT |
| SERGEANT SHUUYA | 5TH DEFENDANT |
| CONSTABLE WILBARD MWOONGELI | 6TH DEFENDANT |
| CONSTABLE CORNELIUS MUKAWE | 7TH DEFENDANT |
| CONSTABLE HAMUKWAYA | 8TH DEFENDANT |

Neutral Citation: *Hamwoongo v Government of the Republic of Namibia* (HC-MD-CIV-ACT-DEL-2021/00670) [2024] NAHCMD 336 (14 June 2024)

Coram: MASUKU J
Heard: 24 May 2024
Delivered: 14 June 2024

Flynote: Civil procedure – Special Plea – Prescription – Section 13(1) and section 16 of the Prescription Act 68 of 1969 – Section 39(1) of the Police Act 19 of 1990 – The implication of section 13 of the Prescription Act *vis-à-vis* the provisions of section 39 of the Police Act – Acting in pursuance of the Act – Acting in the course and scope of employment – *Bruni N.O. v Inspector General of Police*.¹

Summary: The third defendant alleged that on or about 30 September 2015, at and/or near Ohandiba village in Ohangwena region, the third plaintiff, who was then 12 years old, was wrongly, unlawfully and intentionally assaulted by the third to eighth defendants who at that time, were stationed at Eenhana police station.

The defendants raised a special plea of prescription, asserting that the action was not instituted within one year after the cause of action arose and accordingly, in terms of s 39(1) of the Police Act, 'the Act,' the claims against the defendants have prescribed. The third plaintiff opposed the special plea.

Held that; Extinctive prescription as provided for in the Prescription Act, causes effective loss of the right to enforce an obligation after a certain period of time. However, statutory limitations on the other hand, are provided for, under various enabling legislation such as the Police Act, and the legislature had not intended to take away the rights of the claimant, but rather prescribe requirements to the claimant before taking the intended action.

Held further; The legislature never intended to block out minors from approaching the court to seek redress. S 39(1) of the Police Act most certainly is not framed in that

¹ *Bruni N.O. v Inspector General of Police* (HC-MD-CIV-ACT-OTH-2022/00521) [2023] NAHCMD 347 [22 June 2023].

fashion whereby a minor cannot institute legal action against the State, through their legal guardian.

Held further that: The word 'shall' is peremptory in s 39(1) of the Police Act, however, there are circumstances that can negate the said provision, such as the minority age of the third defendant, and it is provided in the same breath, that the Minister may at any time waive compliance with the provisions provided for in this section.

ORDER

1. The defendants' special plea of non-compliance with section 39(1) of the Police Act 19 of 1990, is dismissed.
2. The defendants are to pay the plaintiffs' costs.
3. The matter is postponed to **4 July 2024** at **08:30** for a case planning conference.
4. The parties are ordered to file a joint case plan, together with proposed case planning order on or before **1 July 2024**.

JUDGMENT

MASUKU, J

Introduction

[1] In this matter, the court delivered its judgment on the 30 January 2023, on the special plea of prescription raised by the defendants on 26 October 2022, in respect of the first and second plaintiff. However, it was brought to the attention of the court

regarding the said judgment, that the court did not pronounce itself in terms of the third plaintiff's claim.

[2] The court directed the parties to file supplementary heads of argument, in respect of the third plaintiff. The parties complied with the direction of the court and respectively filed their heads of argument.

The parties and representation

[3] The plaintiff is Ms Patrina Hamwoongo, an adult female, she resides at Ohandiba village in Eenhana. She sued in her capacity as the biological grandmother and legal guardian of one Dutchman Kadilah, and Johaness Nghihafa, were was born 15 September 2005 and 03 September 2005, being the first and second plaintiffs, respectively.

[4] The court has already pronounced itself on the first and second plaintiffs' position, by delivering a judgment on 30 January 2023, and will not exert itself with their position any further.

[5] The third plaintiff is Leonard Nghihafa, an 18 year old learner residing at Ohandiba village in Eenhana, in the Republic of Namibia.

[6] The first defendant is the Government of the Republic of Namibia. The second defendant is the Minister of Home Affairs, Immigration, Safety and Security, in the care of the Office of the Government Attorney, 2nd Floor, Independence Avenue, Windhoek.

[7] The third to eighth defendants are members of the Namibian Police Force, they are all based in Windhoek. It is unnecessary, for present purposes to identify the defendants individually.

[8] It is alleged that when the events giving rise to the cause of action occurred, these defendants were acting in the course of duty and within the scope of their employment with the first and second defendants.

[9] Ms Brandt appeared for the third plaintiff whereas, Ms Nghishekwa represented all the defendants. The court records its appreciation to counsel for the assistance they dutifully rendered to the court in the determination of this matter.

Background

[10] The parties appeared before the court, to note a judgment on 24 November 2023. However, the court wanted the parties to consider the implications of a case by Sibeya J, *Bruni N.O. v Inspector General of Police*.²

[11] A recap of this matter will do. The third defendant's matter was consolidated with two other matters under the respective cases: *Petrina Hamwoongo vs Government of the Republic of Namibia* HC-MD-CIV-ACT-DEL-2021/00703, *Petrina Hamwoongo vs Government of the Republic of Namibia* HC-MD-CIV-ACT-DEL-2021/00670 and *Leonard Nghihafa vs Government of The Republic of Namibia* HC-MD-CIV-ACT-DEL-2021/00711.

[12] The third defendant alleged that on or about 30 September 2015, at or near Ohandiba village in Ohangwena region, the third plaintiff, who was then 12 years old, was wrongly, unlawfully and intentionally assaulted by the third to eighth defendants who at that time were stationed at Eenhana police station.

[13] The third plaintiff, acting in his own capacity herein, was a minor, 12 years of age at the time of the alleged assault and instituted these proceedings on 26 February 2021 after he attained majority on 24 February 2021.

² *Bruni N.O. v Inspector General of Police* (HC-MD-CIV-ACT-OTH-2022/00521) [2023] NAHCMD 347 [22 June 2023].

[14] The third plaintiff claims general damages in the amount of N\$600 000 computed as follows: Pain and suffering for which he claims N\$150 000; emotional and psychological shock and trauma for which he claims N\$130 000; cruel, inhuman and degrading treatment in the amount of N\$120 000; violation of children's rights, inconvenience and discomfort for which he claims N\$100 000 and loss of amenities for which he claims N\$100 000.

[15] The defendants raised a special plea of prescription, asserting that the action was not instituted within one year after the cause of action arose and accordingly, in terms of s 39(1) of the Act,³ the claims against the defendants have prescribed. The third plaintiff opposed the special plea.

[16] The court has already made a determination on the first and second plaintiff's claim and the question for determination at this juncture, in respect of the third plaintiff, is whether a minor who does not institute a claim against the Minister until he attains the age of majority is bound to comply with the provisions of S 39 (1) of the Act.

The third plaintiff's case

[17] Ms Brandt submitted that it is not in dispute that the plaintiff provided the defendants with the required notice in terms of s 39(1) on 25 January 2021, thereby complying with the requirements set out in s 39(1) of the Act. She further submitted that, in respect of the time limitation set out in s 39(1) of the Act, the time period only commences to run in respect of minors after they have attained majority.

[18] She supported her position by referring to the principle that a minor does not have *locus standi in judicio* to institute proceedings. The said principle was supported by Chomba AJA in *Minister of Home Affairs v Madjiet and Others* wherein he stated at paragraph 38 that:

³ Police Act 13 of 1990.

‘...On the other hand, time is of no essence in the case of moving the Minister for waiver. In other words, the claimant who fails to sue during the period when the limitation starts to run on account of, say lack of financial resources, can still sue much later when he comes into enabling financial resources. The same would be the case for a person who was a minor at the time the cause of action arose. If when he/she attains majority, he/she is incapacitated from suing because of some genuine handicap, he/she can still motivate the Minister for a waiver at any time after the handicap has ceased to exist.’

[19] Ms Brandt submitted that, in line with what was said by Chomba AJA in *Madjjet supra*, the time period stipulated in section 39(1) of the Act did not start to run from 30 September 2015 when the third plaintiff was a minor but commenced to run after the third plaintiff attained majority on 24 February 2021, and thus his claim has been instituted within the 12 months period.

[20] The third plaintiff had also made reference to the Prescription Act,⁴ and submitted that the said Act is to apply in this matter.

The defendants' case

[21] The defendants raised a special plea of prescription in terms of s 39(1) of the Act. The defendants stated that the third plaintiff brought its action on 24 February 2021, which is more than one year after the third plaintiff's cause of action arose. Ms Nghishekwa submitted that the third plaintiff's claim prescribed in terms of the provisions of s 39 (1) of the Police Act.

[22] The defendants in their heads of argument referred to the Prescription Act⁵ 68 of 1969, and submitted that extinctive prescription, as referred to by the Act, causes effective loss of the right to enforce an obligation after a certain period of time. Ms Nghishekwa further added that, statutory limitations are provided for under various pieces of legislation.

⁴ Prescription Act 68 of 1969

⁵ Prescription Act 68 of 1969.

[23] The defendants referenced *Loubser*,⁶ and argued that *Loubser*, recognizes that a large number of statutory provisions prescribe time limits for the institution of an action against the State, statutory bodies and local government institutions. The defendants in para 7 of their heads of argument dated 14 November 2022, state the following quoted verbatim:

‘7. He further states that these provisions have been taken to embody a distinct form of extinctive prescription in that they do not affect substantive rights at all, but merely bar a remedy, and as such form part of the law of procedure. In the present matter, we submit that this description is accurate with respect to section 39 of the Police Act because although that section contains a preliminary bar for instituting proceedings without giving notice within one year after the action arose, it does not permanently take away a litigant's right to sue as the section also provides for a waiver by the Minister.’

[24] The defendant's further relied on the case of *Gibeon Village Council v Uaaka*,⁷ and submitted that this case cautioned against subjecting statutory limitations to extinctive prescription provisions under the Prescription Act. In this regard, Parker, AJ, stated the following:

‘[9] By a parity of reasoning, the Prescription Act 68 of 1969 and the Limitation of Legal Proceedings (Provincial and Local Authorities) Act 94 of 1970 are not applicable to the instant proceeding. In our statute law, where an Act enacts limitation provisions for the doing of an act under that statute, it is not open to a court or other tribunal to disregard such provision and go hunting for a limitation provision in another statute and interpret and apply such external statute, unless the matter was adjudicated on under such external statute. The instant case was adjudicated on by the arbitrator under the Labour Act; and so, the Labour Act must apply to matters the Act has provisions governing them. The limitation provision provided in s 86 (2) (b) is clear, unambiguous and sufficient. Accordingly, I hold that the arbitrator misdirected himself on the law when he relied on (a) the Limitation of Legal Proceedings (Provincial and Local Authorities) Act 94 of 1970 and (b) the Prescription Act 68 of 1969; and (c) when he applied the

⁶ Loubser, M. M. (1996). Extinctive Prescription.

⁷ *Gibeon Village Council v Uaaka* (HC-MD-LAB-APP-AAA-2020/00044) [2021] NALCMD 3 (4 February 2021).

'cause of action' requirement found in action proceedings, as aforesaid. Based on this ground alone, I conclude that the arbitrator's decision stands to be set aside. It is a wrong decision.

[10] By the way, if the arbitrator could derive any comfort from this observation, I should say the arbitrator was led astray by counsel for the appellant Council in whose point of law statement relied on Act 94 of 1970 and Act 68 of 1969. As a court sitting as an appeal court to the arbitration tribunal, I think we have a duty to sound this warning. Arbitrators are presiding officers of tribunals; and so, they should act as such. They should be careful. They should not allow themselves to be bamboozled by everything legal practitioners present to them on the law. They should try to do their own research on the law they wish to apply. As I have shown previously, the Labour Act provides limitation provisions; and they are clear and unambiguous. That is what should be interpreted and applied in a labour dispute, governed by s 86 of the Labour Act, before the Labour Commissioner, and not any statutory provisions external to the Labour Act, as far as our statute law is concerned, as explained previously.'

[25] The defendants submitted that, similarly, in the present matter, since the defendants raised prescription in terms of the Act, as the matter involves actions of the members of the Namibian Police Force, the provisions of the Act are applicable to this case and not the Prescription Act.

The law

[26] Section 13 of the Prescription Act,⁸ provides the following:

'Completion of prescription delayed in certain circumstances

(1) If -

(a) the creditor is a minor or is insane or is a person under curatorship or is prevented by superior force including any law or any order of court from interrupting the running of prescription as contemplated in section 15(1); or

(b) the debtor is outside the Republic (including the territory of South-West Africa); or

(c) the creditor and debtor are married to each other; or

⁸ *Supra*.

(d) the creditor and debtor are partners and the debt is a debt which arose out of the partnership relationship; or

(e) the creditor is a juristic person and the debtor is a member of the governing body of such juristic person; or

(f) the debt is the object of a dispute subjected to arbitration; or

(g) the debt is the object of a claim filed against the estate of a debtor who is deceased or against the insolvent estate of the debtor or against a company in liquidation or against an applicant under the Agricultural Credit Act, 1966 (Act No. 28 of 1966), or the Farmers' Assistance Ordinance, 1962 (Ordinance No. 11 of 1962, of the territory of South-West Africa); or

(h) the creditor or the debtor is deceased and an executor of the estate in question has not yet been appointed; and

(i) the relevant period of prescription would, but for the provisions of this subsection, be completed before or on, or within one year after, the day on which the relevant impediment referred to in paragraph (a), (b), (c), (d), (e), (f), (g) or (h) has ceased to exist, the period of prescription shall not be completed before a year has elapsed after the day referred to in paragraph (i).

(2) A debt which arises from a contract and which would, but for the provisions of this subsection, become prescribed before a reciprocal debt which arises from the same contract becomes prescribed, shall not become prescribed before the reciprocal debt becomes prescribed.'

[27] Section 39(1) of the Police Act of 1990 provides the following:

'Prescription of actions, notification of proceedings, cause of action, and service of certain process,

39. (1) Any civil proceedings against the State or any person in respect of anything done in pursuance of this Act shall be instituted within 12 months after the cause of action arose, and notice in writing of any such proceedings and of the cause thereof shall be given to the defendant not less than 1 month before it is instituted: Provided that the Minister may at any time waive compliance with the provisions of this subsection.

(2) If any notice contemplated in subsection (1) is given to the Inspector-General, it shall constitute notification to the defendant concerned.

(3) Any process by which any proceedings contemplated in subsection (1) are instituted and in which the Minister is the defendant or the respondent, may be served on the Inspector General.'

[28] Ms Nghishekwa submitted that civil proceedings against the State or any person in respect of anything done in pursuance of the Act shall be instituted within 12 months after the cause of action arose, and notice in writing of any such proceedings and of the cause thereof shall be given to the defendant not less than 1 month before it is instituted: Provided that the Minister may at any time waive compliance with the provisions of this subsection.

[29] The defendant further submitted with reference to the matter of *Bruni N.O v Inspector General of Police*,⁹ in which the court defined pursuance as the carrying out or pursuing of something. Pursue is defined as "seek to attain a goal."

[30] The court was referred to the matter of *Mcangyangwa Nzima*,¹⁰ as cited in *Bruni*, wherein the court, considered the conduct of a police officer done in the course of employment and that which is carried out in pursuance of the Act stated:

[29] I respectfully align myself with the view that, depending on the nature of the act in question or the place where it is performed, a policeman may act in the course and scope of his employment without necessarily doing something in pursuance of the Act. In my judgment the two concepts are not co-extensive and the former is of a wider import than the latter; while the latter includes the former, the converse is not necessarily so'.

[31] Ms Nghishekwa submitted that the third plaintiff's contention that the prescription does not run against minors stands to fail. The court was referred to the judgment of Ndauendapo J, *Zhang Fuang vs The Government of the Republic of Namibia*,¹¹ which held in para 9 that:

⁹ *Supra*.

¹⁰ *Mcangyangwa Nzima* 1993 (1) SA 706 (E) at 712.

¹¹ *Zhang v Government of Republic of Namibia* (3119 of 2007) [2010] NAHC 127 (4 October 2010).

[9] In Namibia the Supreme Court had occasion to consider section 39(1) of the Police Act. In the case of Minister of Home Affairs v Madijedt and Others 2007(2) NR 475 the court, in refusing to declare section 39(1) unconstitutional, held that:....S39(1) "differentiation (between claimants under the Police Act and other claimants covered by the Prescription Act 68 of 1969) was reasonably connected to a legitimate governmental objective. The inherent inequality said to be existing in S39(1), was justified and reasonably so, by the need to regulate claims against the State in a way that promotes, speed, prompt investigation of surrounding circumstances so that, where necessary, the State could ensure that it was not engaged in avoidable and costly civil litigation."

[32] In terms of the Prescription Act, the defendants submitted that the third plaintiff's case has prescribed under the Prescription Act. Stating further that the third plaintiff could have timeously instituted the civil action within the three years prescribed by the said Act with the aid of a guardian.

[33] The defendants further added that, the third plaintiff had no good cause for waiting and suing after the three years prescribed, has lapsed. It is the defendants' submission that the court should not grant the third plaintiff an indulgence to pursue the matter further after it has prescribed in terms of the Police Act 19 of 1990 and the Prescription Act 68 of 1969.

[34] Ms Brandt for the third defendant submitted that, regarding the time limitation provided for by s 39(1) of the Act, the third plaintiff submitted that in relation to minors, the prescription period is at a stall until the moment the minor attains majority.

[35] Ms Brandt submitted further that, the time period stipulated in s 39(1) of the Act did not start to run from 30 September 2015, when the third plaintiff was a minor, but from 24 February 2021 when the third plaintiff attained majority. The time period ended on the 23 February 2022. She added that the proceedings were instituted before prescription and the argument that the matter has prescribed does not work in favour of the defendant.

[36] With reference to the case of *Bruni*,¹² Ms Brandt submitted that police officers may act in terms of any other legislation or common law other than the Act. Where reference is made to the Act or any other law (such as common law), a police officer may act in terms thereof and still be acting within the course and scope of his employment, but not in pursuance of the Act.

[37] Ms Brandt further added that, concerning the functions of the police created by the Police Act,¹³ Clause 13 of the Act, provides that the police force is responsible for the preservation of the internal security of Namibia, maintenance of law and order and the protection of life and property. Police officers are required to exercise their powers and perform their duties as per the Act or any other law conferred or imposed upon such members.

Application of the law to the facts

[38] It is common cause that the cause of action arose on or about 30 September 2015 where it is alleged that the third plaintiff was wrongfully, unlawfully, intentionally and physically assaulted and detained by the defendants herein.

[39] The question that the court referred to the parties, related to whether in light of the *Bruni* judgment, the plaintiffs in this case are actually covered by the provisions of s 39 of the Act, which it was held, must be restrictively construed in the light of their effect on parties who claim they have been wronged by police officers.

[40] The court has taken into consideration counsel's submissions and the court was referred to a plethora of case law. The third plaintiff contends that he had given notice to the defendants in terms of section 39(1) of the Act, and submitted that he had complied with the requirements of the said provision.

¹² *Supra.*

¹³ *Supra.*

[41] The defendants submitted that the third plaintiff brought this action on 24 February 2021, which is more than 12 months after the plaintiff's cause of action arose. The court takes into account what was stated in *Benyamen v Government of the Republic of Namibia*,¹⁴ where Ueitele J stated that:

'10] Section 39(1) of the Police Act requires any civil proceedings against the state or any person, in respect of anything done in pursuance of the Act to be instituted within 12 months after the cause of action arose. The section further stipulates that a notice in writing of any such proceedings and of the cause thereof must be given to the defendant not less than one month before the proceedings are instituted. The section contains a proviso which provides that the minister may at any time waive compliance with the provisions of the section.' (Emphasis added).

[42] The question to determine, is whether the instant matter, is one to which the provisions of s 39 apply. In doing so, I am of the considered view that the major findings in *Bruni*, and with which I am in agreement, must be taken into account. I intend to briefly deal with those findings below.

[43] First, it was stated that the words in the course and scope of employment and in pursuance of the Act, are not the same. They deal with different incidents of liability. The former, relates to common law principles of vicarious liability, yet the latter is statutory in nature. It was held that the latter enures to the benefit of the defendant and whose effect if upheld, is to bar the plaintiff's action. It is thus restrictive and must be strictly interpreted.¹⁵

[44] Second, it was held that the issue of whether s 39 applies, is one that cannot be decided *in vacuo*. The circumstances and facts of attendant to the matter at hand, must be considered. The court also held that a police officer may act in terms of the Act or other law and still be acting in course and scope of employment. Third, the court held

¹⁴ *Benyamen v Government of the Republic of Namibia* (HC-MD-CIV-ACT-DEL-2019/04342) [2022] NAHCMD 361 (22 July 2022)

¹⁵ *Bruni ibid* para 31.

that in that case, the defendants did not put up a case to prove that they had acted in pursuance of the Act in keeping the diamonds demanded by the applicants.

[45] In the instant case, the defendants have not brought any evidence to show or suggest that their acts, as alleged by the plaintiff, were carried out in pursuance of the Act. The defendants were content, in that regard, to merely allege the application of the Act, without leading any evidence to show that when the defendants so acted, they indeed acted in pursuance of the Act, as alleged in the special plea. The onus, it seems to me rested on the defendants to adduce the evidence necessary to show that their acts do fall within the circumference of the s 39 as alleged in the special plea.

[46] Where the defendants fail to lead that evidence, I am of the considered view that the court is, in those circumstances, entitled to consider the plaintiff's allegations and gauge whether they are, on the face of it, consistent with the police officers acting in pursuance of the Act. This is done, not for purposes of determining liability but to decide whether or not there is enough material placed before the court to show that the acts complained, while maybe falling within the course and scope of employment, do appear fall within the provisions of s 39 of the Act.

[47] Sibeya J, in his erudite and well reasoned judgment, proceeded to consider the relevant provision of the Police Act and the functions of the police and which an officer can be said to be acting in pursuance of, when regard is had to s 39. These are dealt with at para [34] of his judgment. These include preservation of internal security; maintenance of law and order, investigation of alleged offences; [reservation of crime and protection of life and property. Section 14(1), thereof states that members of the Force shall exercise such powers and perform such duties mentioned under the Act or any other law.

[48] In the instant case, the plaintiffs allege that the defendants assaulted them. This, on any construction, if proved, would not be one of the duties or functions of members of the police force, even when investigating alleged criminal activities. To the contrary, it

stands in direct opposition to the functions of the police in terms of the Act. It was, as stated earlier, that it was incumbent on the defendants, in cementing their case that s 39 applies in this case, to lead evidence to show that the case indeed falls within its perimeters. They failed to do so and this leaves the court, on this narrow aspect, with the allegations of the plaintiffs, which are not yet gainsaid, as this may be done as the case proceeds.

[49] The above finding, accordingly leads me to the conclusion that the defendants have failed to show that this is a case that falls within the domain of s 39 and that for that reason, the plaintiffs were obliged to file their notices in terms of s 39. As indicated above, this finding is arrived at on the papers and because the defendants, on whom the onus to prove that s 39 applies, failed to discharge same.

[50] This finding, I must emphasise, does not, however, extend to a finding that the allegations by the plaintiffs that they were assaulted and abused, as alleged, are gospel truth and correct. The matter should, in view of this finding, proceed to pleading and the defendants file their plea and the entire case management exercise takes its place.

Conclusion

[51] In view of the foregoing conclusions, I am of the view that the defendants' reliance of the provisions of s 39 of the Act, must fail. They should be allowed to enter the main fray of the case and file their pleadings in readiness for the case to progress towards trial.

[52] In view of the foregoing considerations, findings and conclusions, I am of the considered view that the *Bruni* judgment applies to the instant matter. As such, the court is of the considered view that the provisions of s 39 do not apply. That being the case, the plaintiffs were thus not obliged, on the facts of this case and considering how the defendants decided to mount their defence, to file the statutory notice, as contended by the defendants.

Order

[53] The appropriate order to issue, in view of the conclusions reached above, is the following:

1. The defendants' special plea of non-compliance with section 39(1) of the Police Act 19 of 1990, in respect of the third plaintiff, is dismissed.
2. The defendants are to pay the third plaintiffs' costs.
3. The matter is postponed to **4 July 2024** at **08:30** for a case planning conference.
4. The parties are ordered to file a joint case plan, together with proposed case planning order on or before **1 July 2024**.

T S MASUKU
Judge

APPEARANCES

THIRD PLAINTIFF: Brand
Instructed by: Legal Assistance Centre, Windhoek

DEFENDANTS: R Nghishekwa
Of the Office of the Government Attorney