

REPUBLIC OF NAMIBIA



IN THE HIGH COURT OF NAMIBIA, MAIN DIVISION, WINDHOEK
RULING IN TERMS OF PRACTICE DIRECTION 61

Case Title: Namibian Gymnastics Federation Applicant (under the leadership of Ms Sharifa Wentworth) and Namibian Gymnastics Federation 1 st Respondent (under the leadership of Ms Sonja Olivier) Walvis Bay Gymnastics Club 2 nd Respondent	Case No: HC-MD-CIV-ACT-OTH-2019/04834
	Division of Court: Main Division
	Heard on: 23 July 2024
Heard before: Honourable Mr Justice Usiku	Delivered on: 18 October 2024
Neutral citation: <i>Namibian Gymnastics Federation v Namibia Gymnastics Federation</i> (HC-MD-CIV-ACT-OTH-2019/04834) [2024] NAHCMD 614 (18 October 2024)	
Order: 1. The application to strike out, brought by the Namibian Gymnastics Federation (under the leadership of Ms Sonja Olivier) is dismissed. The applicant in this application is ordered to pay the costs of the respondent occasioned by the application to strike out. 2. The application to refer the application dated 18 August 2023 to oral evidence, brought by the Namibian Gymnastics Federation (under the leadership of Ms Sonja Olivier) is dismissed. The applicant in this application is ordered to pay the costs of the respondent occasioned by	

the application for leave to refer the application dated 18 August 2023 to oral evidence.

3. The application for an order directing Du Pisani Legal Practitioners, as instructed by Jan Olivier and Company to withdraw from record, brought by the Namibian Gymnastics Federation (under the leadership of Ms Sharifa Wentworth) is dismissed. The applicant in this application is ordered to pay the costs of the respondent occasioned by this application.
4. The main action is postponed to 13 November 2024 at 15:15 for a status hearing.
5. The parties shall file a joint status report on or before 6 November 2024.

Reasons for order:

USIKU J:

Introduction

[1] This matter concerns three interlocutory applications. The first application is brought by the Namibian Gymnastics Federation (under the leadership of Ms Sharifa Wentworth) in which the applicant seeks an order directing Du Pisani Legal Practitioners, as instructed by Jan Olivier and Company, to withdraw as plaintiff's legal practitioners in the main action, to enable plaintiff's newly appointed legal practitioners to come on record.

[2] The second interlocutory application is brought by the Namibian Gymnastics Federation (under the leadership of Ms Sonja Olivier) in which the applicant seeks an order directing that the first named interlocutory application be referred to oral evidence.

[3] The third interlocutory application is brought by the Namibian Gymnastics Federation (under the leadership of Ms Sonja Olivier) in which the applicant seeks an order striking out certain paragraphs contained in the replying affidavit filed by the Namibian Gymnastics Federation (under the leadership of Ms Sharifa Wentworth) in respect to the first-named interlocutory application.

Background

[4] Since 2019, the Namibian Gymnastics Federation (NGF) has been plagued by internal fights over its governance. These internal fights have culminated into the formation of two opposing groups, each of which is calling itself the NGF. One of these groups is led by Sonja Olivier ('Ms Olivier'), whereas the other is led by Sharifa Wentworth ('Ms Wentworth').

[5] On 23 February 2019, the NGF held an elective General Assembly at which Ms Olivier was elected as the President of NGF. Two factions arose within the NGF, following the aforesaid General Assembly. One of those factions supported Ms Olivier as President, whereas the other did not. The infighting, following the General Assembly, was characterized, among other things, by some members of the newly elected executive council who did not support the President, undermining the work of the council by boycotting council meetings. The situation progressed into a state whereby each faction had formed its own executive council.

[6] In order to address the abovementioned tensions within the NGF, in October 2019, the Minister of Sports instructed the Namibian Sports Commission (NSC) and the Namibian National Olympic and Commonwealth Games Association (NNOC) to address the differences plaguing the NGF. The NSC and the NNOC held various meetings with the representatives of the two factions, however, they were unable to reach an amicable solution.

[7] On 31 October 2019, the NGF (under the leadership of Ms Olivier) instituted the present action, in which the NGF seeks delivery of certain property which is allegedly in the possession Walvis Bay Gymnastics Club (the defendant). The defendant defends the action. In its plea, the defendant raised among other things, a special plea to the effect that the plaintiff lacks standing to institute those proceedings and denies that NGF is the owner of the property in question. The parties have filed their respective witness statements. The next stage is the pre-trial conference.

[8] On 28 November 2020, the NGF (under the leadership of Ms Olivier) held a special General Assembly. The agenda of this meeting include the adoption of various amendments to the NGF's Constitution. One of such amendments is the change of name, from Namibian Gymnastics Federation to Namibian Gymnastics (NamGym). According to Ms Olivier, NamGym is also known as Namibian Gymnastics Federation in terms of the amended Constitution.¹

¹ Paragraph 39.1 of the Answering Affidavit.

[9] On 4 October 2021, the NSC resolved that the NGF must use its 2013 Constitution to take it out of dormancy, and on 27 November 2021, the NGF held an elective meeting where Ms Wentworth was elected as President of NGF. The faction led by Ms Olivier did not participate in this meeting.

[10] On 28 July 2022, this court delivered judgment in a matter between *Namibian Gymnastics Federation v The Namibian Sports Commission* (HC-MD-CVI-ACT-OTH-2021/02269) [2022] NAHCMD 373 (28 July 2022), in which the court upheld the defendants' special plea that NamGym lacks *locus standi* to institute proceedings in which it sought several reliefs, including reviewing and setting aside certain resolutions and declaratory orders made by NSC and NNOC.

[11] On 23 August 2022, NamGym appealed to the Supreme Court against this court's decision made on 28 July 2022. The outcome of the appeal is still being awaited.

[12] On 18 August 2023, the NGF (under the leadership of Ms Wentworth) brought the present interlocutory application seeking an order directing Du Pisani Legal Practitioners, as instructed by Jan Olivier and Company, to withdraw from record to enable the plaintiff's newly appointed legal practitioners to come on record.

[13] On 26 October 2023, NGF (under the leadership of Ms Olivier) (the plaintiff in the main action) filed an application to strike out certain paragraphs in the replying affidavit filed by NGF (under the leadership of Ms Wentworth) in respect of the application filed on 18 August 2023.

[14] On 7 December 2023, the plaintiff in the main action filed an application for an order directing that application filed on 18 August 2023 be referred to oral evidence.

[15] For the sake of clarity, I shall refer to the NGF under the leadership of Ms Wentworth as 'the NGF' and NGF under the leadership of Ms Olivier as NamGym.

NGF's position

[16] In the main interlocutory application the NGF submits that its application challenges Jan Olivier and Company's mandate to remain on record as legal practitioners for the NGF. Jan Olivier and Company receives instructions from Ms Olivier, whereas Koep and Partners

Attorneys (who represent the NGF) receives instructions from Ms Wentworth.

[17] The NGF contends that Ms Olivier is not the President of the NGF clothed with authority to act on behalf of the NGF and as a result, Jan Olivier and Company cannot remain on record on Ms Olivier's instructions in the circumstances where Jan Olivier and Company's mandate has been terminated by the NGF, the rightful plaintiff in the main action.

NamGym's position

[18] NamGym contends that the NGF claims that the plaintiff in the main action and the NGF (under the leadership of Ms Olivier) is the same person. The application seeks for an order that the legal practitioners should withdraw. Ms Wentworth claims that NamGym is another federation and continues to drive this action. NamGym therefore argues that, on the version of Ms Wentworth, NamGym should have been joined as a party against which relief is claimed or as an interested party who retains the legal practitioners which she asks to be ordered to withdraw.

Analysis

[19] In regard to the application of an order directing the plaintiff's legal practitioners to withdraw, the crucial issue for determination is whether the legal practitioners in question represent NGF or NamGym. It bears repeating that since the General Assembly of 23 February 2019, at which Ms Olivier was elected as President, there has been two factions within the NGF.

[20] When the NGF instituted the present action on 31 October 2019, the factions were already in existence. It was the faction led by Ms Olivier that instituted the present action. Further, it was that faction that instructed Jan Olivier and the Company to represent it in the present action.

[21] In the present matter, I am of the view that the NGF under the leadership of Ms Wentworth has not made out a case that they are the entity that had instructed Jan Olivier and the Company to represent them. From the common cause facts presented by both parties, there has not been a relationship between Jan Olivier and Company and the NGF led by Ms Wentworth, in terms of which a mandate was given by the latter to Jan Olivier and Company to act as their legal representatives. The NGF led by Ms Wentworth cannot therefore terminate a

mandate that it never gave. The NGF under the leadership of Ms Wentworth is therefore not entitled to an order directing Jan Olivier and Company to withdraw. The application for an order directing the plaintiff's legal practitioners in the main action to withdrawn, therefore stands to be dismissed. Because of the conclusion I have arrived at, I am of the view that it is not necessary to address various legal points raised by the parties in their respective pleadings as such points have become academic.

[22] I have considered NamGym's application for an order referring the main interlocutory application to oral evidence. I am of the view that such application has no merit, as there is no real dispute of fact on the issue that requires the court's determination. The application for referral to oral evidence therefore stands to be dismissed.

[23] In regard to the application to strike out, I am of the view that NamGym has not made out a case that it shall be prejudiced in the conduct of its claim or defence, if the alleged offending paragraphs are not struck out. For that reason the application to strike out falls to be dismissed.

[24] As regards the issue of costs, the general rule is that costs follow the result. Accordingly the general rule shall find application. NamGym has prayed for costs not limited in terms of rule 32(11). The NGF has not requested a similar order. Having considered the factors to be taken into account when determining whether costs on a higher scale than the limit imposed by rule 32 (11) are justified, I am of the view that NamGym has not made out a clear case justifying the granting of costs on a higher scale than the limit imposed by rule 32(11). I shall therefore grant costs capped as contemplated under rule 32(11).

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

1. The application to strike out, brought by the Namibian Gymnastics Federation (under the leadership of Ms Sonja Olivier) is dismissed. The applicant in this application is ordered to pay the costs of the respondent occasioned by the application to strike out.
2. The application to refer the application dated 18 August 2023 to oral evidence, brought by the Namibian Gymnastics Federation (under the leadership of Ms Sonja Olivier) is dismissed. The applicant in this application is ordered to pay the costs of the respondent occasioned by the application for leave to refer the application dated 18 August 2023 to oral evidence.

3. The application for an order directing Du Pisani Legal Practitioners, as instructed by Jan Olivier and Company to withdraw from record, brought by the Namibian Gymnastics Federation (under the leadership of Ms Sharifa Wentworth) is dismissed. The applicant in this application is ordered to pay the costs of the respondent occasioned by this application.
4. The main action is postponed to 13 November 2024 at 15:15 for a status hearing.
5. The parties shall file a joint status report on or before 6 November 2024.

Judge's signature	Note to the parties:
B USIKU Judge	Not applicable
Counsel:	
Applicant:	1st Respondent:
C Visser Koep & Partners, Windhoek	J Olivier Jan Olivier & Co., Walvis Bay