

REPUBLIC OF NAMIBIA



IN THE HIGH COURT OF NAMIBIA, MAIN DIVISION, WINDHOEK
RESCISSION APPLICATION

Case Title: Chairperson of the Immigration Selection Board Chief of Immigration and Jacques Kamangu	1 st Applicant 2 nd Applicant Respondent	Case No: HC-MD-CIV-MOT-REV-2022/00463 (INT-HC-RECDJDGM-2024/00539) Division of Court: Main Division, Windhoek Heard on: 29 October 2024
Heard before: Coleman AJ		Delivered on: 11 November 2024
Neutral citation: <i>Chairperson of the Immigration Selection v Kamangu</i> (HC-MD-CIV-MOT-REV-2022/00463) [2024] NAHCMD 681 (11 November 2024)		
Order:		
<ol style="list-style-type: none">1. The late filing of applicants' replying affidavit is condoned.2. The order dated 7 November 2023 in case number HC-MD-CIV-MOT-REV-2022/00463 is hereby varied by replacing paragraph 2 thereof with the following paragraph: "2. Applicant's application for permanent residence, duly amplified if necessary, is referred back to the Immigration Selection Board for reconsideration while applying the principles of Article 18 of the Namibian Constitution and to be attended to expeditiously."3. Each party is to pay its own costs in respect of the rescission application.		

4. The matter is removed from the roll: Case Finalized.

Reasons for order:

Coleman AJ:

Introduction

[1] This is a rescission application in the context of a review application. Respondent (as applicant with the current applicants as respondents) obtained an order by default from Oosthuizen J on 7 November 2023 (the Order). Reasons were provided on 3 June 2024. The Order reads as follows:

“IT IS HEREBY ORDERED THAT:

1. The first respondent’s decision taken on 15 June 2022, rejecting the applicant’s application for a permanent residence permit in terms of section 26 of the Immigration Control Act, 1993 (Act 7 of 1993) is hereby set aside.
2. The Immigration Control Board, chaired by the first respondent is directed to issue the applicant with a permanent residence permit within 30 days of this court order.
3. The first and second respondents must pay the applicant’s costs of this application.
4. Matter is removed from the roll: Case Finalized.”

[2] This order was granted in the context of case management after several delays and remissness by the legal practitioners of the applicants (respondents in the main matter). From the reasons provided it appears that the issue was the proper constitution of the Immigration Selection Board (the Board) when deciding on respondent’s permanent residence application.

[3] The applicants filed an application for the rescission of the Order on 13 August 2024. Respondent opposes the application and raises a number of issues, including, that applicants did not make out a case for rescission and unreasonable delay. Both parties filed heads of argument. In the heads of argument for the applicants the concession was made that the matter should be referred back to the Board for reconsideration.

[4] At the hearing I raised this concession with applicants’ Counsel and specifically confirmed

that applicants concede that paragraph 1 of the Order stands and only paragraph 2 needs variation. Counsel for respondent resists this concession and submits that referral back to the Board would serve no purpose. She also defends paragraph 2 of the Order. Applicants contend that paragraph 2 of the Order is untenable because the Board does not have the power to issue permanent residence permits. Section 26(3) of the Immigration Control Act, 1993, provides that the Board may authorize the issue of a permit for permanent residence in Namibia. Section 26(4) provides as follows: 'When the board has authorized the issue of a permanent residence permit, the Chief of Immigration shall issue such permit in the prescribed form to the applicant concerned.' I agree with Counsel for applicants.

[5] Counsel for respondent also raised the fact that applicants filed their replying affidavit late in breach of a court order. Applicants provided an explanation for this late filing. It is clear that this matter, as many matters against Government institutions, is replete with delays and remissness. This obviously creates enormous frustration with opposing parties and the Court. The Government Attorneys' office is urged to make work of it.

[6] In my view the applicants' stance herein is reasonable. Paragraph 2 of the Order in any event had to be varied or rescinded. I consequently make the following order:

Order

1. The late filing of applicants' replying affidavit is condoned.
2. The order dated 7 November 2023 in case number **HC-MD-CIV-MOT-REV-2022/00463** is hereby varied by replacing paragraph 2 thereof with the following paragraph:
 "2. Applicant's application for permanent residence, duly amplified if necessary, is referred back to the Immigration Selection Board for reconsideration while applying the principles of Article 18 of the Namibian Constitution and to be attended to expeditiously."
3. Each party is to pay its own costs in respect of the rescission application.
4. The matter is removed from the roll as finalized.

Judge's signature

Note to the parties:

G Coleman Acting Judge	Not applicable
Legal Practitioners:	
Applicants	Respondent
Mr Amukoto, Government Attorneys	Ms Katjipuka, Nixon Marcus Public Law office