CASE NO.: LCA 41/2002

IN THE LABOUR COURT OF NAMIBIA

In the matter between:

ERICA BEUKES **APPLICANT**

and

PEACE TRUST **RESPONDENT**

Coram: Botes, AJ

HEARD ON: **28-10-2010**

DELIVERED ON: **11-03-2011**

JUDGMENT

BOTES, AJ

[1] Applicant on the 18th of August 2010 filed an application in this court in which application the applicant seeks the following relief:

"1. Rescinding the judgment of Judge President Damaseb on 22nd February 2010 in the above matter and setting aside the appeal as void.

2. Granting the cross appeal in this matter.

3. Costs.

4. Further and/or alternative relief."

[2] The application was placed on the roll for hearing on Friday the 27th of August 2010 in terms of the notice of motion. The date of 27th of August 2010 was not allocated by the Registrar of this court nor arranged with the Registrar.

[3] The founding affidavit of the applicant in the application comprises of five paragraphs which reads as follows:

"AFFIDAVIT

I,

ERICA BEUKES

hereby make oath and say:

1. The facts set out herein fall within my personal knowledge save where otherwise stated and are true and correct.

2. I attach hereto a copy of a purported power of attorney with a purported resolution by the board of the Respondent to litigate in this matter.

3. The registered board members included Mr Peper Koep who at no time relevant to this matter attended board meetings nor was invited to same as required by the Deed of Trust.

4. Mr Koep is a registered member of the said Trust with the Master of the High Court.

5. I attach hereto a copy of the Deed of Trust which was registered in.2000.

WHEREFORE, the purported appeal was a nullity as no mandate existed and the judgment is therefore void.

Signed at **WINDHOEK** on this **I8th** day of **August 2010**.

_____

Erica Beukes"

(my own underlining and/or emphasis)

[4] The minutes of the board of trustees meeting held on 3 February 2003 annexed to the affidavit provides as follows:

"MINUTES OF A MEETING OF THE BOARD OF TRUSTEES OF THE PEACE TRUST HELD AT WINDHOEK ON THE 3RD DAY OF FEBRUARIE 2003

RESOLVED

1. THAT the Company prosecute an Appeal in the Labour Court and to apply for a Stay of Execution of the Judgment of the District Labour Court handed down on 15 November 2002 pending the finalisation of the Appeal, in respect to the matter of Erika Beukes.

2. That it is confirmed that Danie Petrus Botha in his capacity as Chairman of the Board of Trustees was and is hereby authorised to do anything necessary to institute such abovementioned process and sign any Power of Attorney or other document which may be necessary to note the aforesaid Appeal and Application for Stay of Execution and to proceed to final determination thereof.

_____

DANIEL PETRUS BOTHA

_____

SOPHIA MH ROSE-JUNIUS

_____

HANS PIETERS"

[5] On the 20th of August 2010 applicant filed an "amendment" to change the headings of the notice of motion and affidavit as filed from "IN THE HIGH COURT" to "IN THE LABOUR COURT." Applicant did not follow the rules applicable to the amendment of pleadings as provided for in the rules of court.

[6] When the aforesaid application was filed the applicant already on the 15th day of March 2010 has filed a notice of application for leave to appeal to the Supreme Court. This intended appeal is directed against the very same judgment that applicant now wants this court to rescind. Applicant in the application for leave to appeal deposed to a thirteen page affidavit in which various alleged misdirection’s, delays and bias on the part of the judge president, are referred to.

[7] The judgment of Damaseb, JP is an appeal judgment which stems from an appeal directed against an award made in favour of applicant in the district labour court. On appeal the award made in favour of applicant was set aside, and applicant's cross appeal was dismissed. This judgment on appeal prompted applicant, who is unrepresented, to file an application for leave to appeal and an application to rescind that very same judgment. The application to rescind was filed approximately 6 months after the application for leave to appeal was filled.

[8] The respondent in the appeal proceedings as well as this application is the Peace Trust, a charitable organisation whose main purpose it is to *inter alia* assist in the rehabilitation of all victims of the liberation war that ravaged this country.

[9] The application for rescission is opposed by the Peace Trust as a result whereof it mandated Norman Tjombe Law Firm to oppose the application on its behalf. Norman Tjombe Law Firm on the 24th of August 2010 filed a notice of representation, a power of attorney to defend, signed by one Gisela Berger, as well as a certified true copy of the minutes of a board meeting of the respondent authorising the said Berger to act on respondent's behalf. Although the notice of representation filed erroneously refers to "a notice of intention to oppose appeal", it is evident from the contents of the rest of the other documents filed simultaneously therewith, that the notice of opposition, at all relevant times, was

intended to be a notice of opposition to the applicant's application for the rescission of the judgment of Damaseb, JP on appeal. This application, on that date, therefore became opposed.

[10] Despite the matter having been opposed the applicant on the 27th of August 2010 proceeded with the application which was set down on the unopposed roll before Swanepoel, J.

[11] Mr Tjombe on the 27th of August 2010 did not appear personally as he presumably, and certainly correctly so, was under the impression that the court in terms of its rules will not hear the matter on Friday 27th August 2010 and that same will be postponed to a date to be arranged with the Registrar of this court. Mr Tjombe requested another legal practitioner to stand in for him in court on the 27th of August 2010.

[12] Applicant on the 27th of August 2010, *inter alia,* submitted to Swanepoel, J that the notice of representation is defective, that the legal practitioner cannot stand in for Mr Tjombe and requested the court to set aside the judgment of Damaseb, JP as prayed for apparently on an unopposed basis.

[13] Swanepoel, J, after hearing applicant and the legal practitioner standing in for Mr Tjombe, ordered that the application for rescission be postponed to a date to be arranged with the Registrar.

[14] This interlocutory ruling apparently left the applicant in a state of despair, which resulted therein that applicant on 16 September 2010, filed a "new application" in which the applicant now seeks the following relief, the contents of which is quoted *verbatim* hereunder.

NOTICE OF MOTION

KINDLY TAKE NOTICE that applicant herewith intends to apply to the above Honourable Court on Friday, 24th September 2010, at l0H00 for an order in the following terms:

1. Rescinding the postponement by Judge Swanepoel on 27th September 2010 *(sic)* in the above matter and setting aside the appeal as void.
2. Granting the cross-appeal in this matter.
3. Costs
4. Further and/or alternative relief.

TAKE NOTICE FURTHER that the grounds on which the application are that the respondent was not present at the hearing,

KINDLY SET DOWN THE MATTER ACCORDINGLY.

Signed at WINDHOEK on this 16th . day of September 2010.

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ERICA BEUKES

Applicant

This new "application" however was not accompanied by any affidavit to support the relief sought by applicant.

[15] The aforesaid "new application" was again set down for hearing by applicant, without applicant arranging a date with the Registrar as is required in terms of the rules of court and as previously ordered by Swanepoel, J.

[16] To further complicate and befuddle the procedures followed by applicant and in complete disregard for the rules of court applicant's husband, one Hewat Beukes, on 20 September 2010 filed a "notice of application for leave to intervene" in which he applies "for leave to intervene" in the application brought by his wife, *inter alia* on the ground of his marriage with applicant. As this application "to intervene" was not pursued on the date of the hearing of the application on the merits I refrain from commenting thereon.

[17] This however was not the end. On 28 September 2010 respondent filed a notice in terms of Rule 30 of the rules of the High Court in which it indicated its intention to "apply for the setting aside of the applicants notice of motion to rescind the order of postponement by the Honourable Justice Swanepoel on the grounds that the notice of motion was filed without an affidavit."

[18] The rule 30 application was set down for hearing on 1 October 2010. On that date Van Niekerk, J ordered that the rule 30 application be removed from the roll and that the affidavit filed by applicant under cover of a "notice of application for supplementary affidavit" be considered to be the supporting affidavit in the rescission application in respect of the order of postponement of Swanepoel, J. (my own underling)

[19] This ruling by Van Niekerk, J again spurred the applicant into action resulting therein that applicant without consideration of any of the rules of court in respect of the set down of applications and the court order of Swanepoel J, set the application down for hearing on Friday, 22 October 2010 at 10h00. Applicant in her apparent belief that Norman Tjombe Law Firm is not properly authorised to represent respondent in the present proceedings only filed a copy of the notice of motion (set down) on the Legal Assistance Centre, (LAC).

[20] On Friday 22 October 2010 I postponed the matter for hearing to 28 October 2010 being a date that the parties on the courts' insistence arranged with the Registrar. I also ordered the parties to file heads of argument on/or before 27 October 2010 which they did. The respondent filed its answering affidavits on the 25th of October 2010. No replying affidavits were filed by the

applicant. This *in esse* means that the application, if necessary, is to be decided on the version of the respondent.[1]

[21] I have decided to allude to the history of this application to illustrate how an application, which could have been dealt with in a summary fashion, found its way onto this court roll on not less than four occasions. Litigants are not to be encouraged by the courts to flood the legal system with unnecessary interlocutory applications, as it delays the judicial process unnecessarily.

[22] As a result of the order of Van Niekerk J, that the supplementary affidavit filed, is to be regarded as the founding affidavit in the application for the rescission of the order of postponement made by Swanepoel J, I have decided that it will be convenient to first deal with the application filed by applicant for the setting aside of the appeal as void and the granting of the cross appeal before I shall deal with the relief sought by applicant to rescind the postponement by Swanepoel J.

[23] The affidavit filed for the setting aside of the appeal judgment by Damaseb JP consists of five paragraphs only, which already have been referred to hereinbefore. Although applicant attempted to include her affidavit directed to the Supreme Court for a purported review / appeal of the proceedings in this court

[1] Plascon Evans Paints Ltd v Riebeeck Paints (Pty) Ltd, 1984(3) SA 634E – 635C;Stellenbosch Farmer's Winery Ltd v Stellenvale Winery (Pty) Ltd, 1957(4) SA 234(C) at 235E-G.

before Damaseb JP, in the record of the present proceedings, same is irrelevant for purposes of the present proceeding as;

23.1 this court does not have the jurisdiction nor the authority to review and set aside its own procedures and judgments except in certain extraordinary circumstances. To do so in general, is the prerogative of, in this instance, the Supreme Court which has the necessary jurisdiction to do so, as it is trite law that once a court has duly pronounced a final judgment or order, it has itself no authority to correct, alter or supplement it.[2]

23.2 the affidavit does not form part of the founding papers of the applicant. In fact, no attempt was made by applicant in her founding affidavit to formally incorporate same as an annexure.[3]

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[2] In De Wet & Others v Western Bank Ltd 1977 (4) SA 770 (T), Malamet J, in the context of a default judgment stated the following on pg 776: "Before a judgement would be set aside under the common law, an applicant would have to establish a ground on which *restitutio in integrum* would be granted by our law such as fraud or *justus error* in certain circumstances. Childerley Estate Stores v Standard Bank of SA Ltd 1924 OPD 163 at pp 166 - 168. Seme v Incorporated Law Society, 1933 (1) TPD 213 at p 215; Makings v Makings, 1958 (1) SA 338 (AD) at p 343; Atahanassiou v Schultz, 1956 (4) SA 357 (W). It would appear that the procedure to set aside a judgment on grounds justifying *restitutio in integrum* is by way of action.

The position as set out above recognises the finality of a judgment once delivered or issued (vide, Estate Garlick v Commission for Inland Revenue, 1934 AD 499 at pp 502 - 503).

Under the common law a judgment can be altered or set aside only under limited circumstances and the additional relief extended by the rules of court is intended to modify such rigid provisions but within the confines of such Rules."

[3] In Swissborough Diamond Mines v Government RSA 1999(2) SA 279 (WLD) the following was stated at p323 – 324:

[24] The applicant in her heads of argument "introduced" a host of bold submissions in an attempt to bolster her case despite the fact that it is trite law that an applicant's affidavit should set out the facts in detail upon which he or she relies.

[25] Insofar as applicant attempts to proof by bold allegations that the Respondent did not authorise the institution of the appeal proceedings in this

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"It is trite law that in motion proceedings the affidavits serve not only to place evidence before the Court but also to define the issues between the parties. In so doing the issues between the parties are identified. This is not only for the benefit of the Court but also, and primarily, for the parties. The parties must know the case that must be met and in respect of which they must adduce evidence in the affidavits... An applicant must accordingly raise the issues upon which it would seek to rely in the founding affidavit. It must do so by defining the relevant issues and by setting out the evidence upon which it relies... The more complex the dispute between the parties the greater precision that is required in the formulation of the issues... the facts set out in the founding affidavit (and equally in the answering affidavit and replying affidavit) must be set out simply, clearly and in chronological sequence and without argumentative matter... Regard being had to the function of affidavits; it is not open to an applicant or a respondent to merely annex to its affidavit documentation and to request the Court to have regard to it. What is required is the identification of the portions thereof on which reliance is placed and an indication of the case which is sought to be made out on the strength thereof... In Heckroodt N O v Gamiet 1959(4) SA 244(T) at 246A-C and Van Rensburg v Van Rensburg en Andere 1963(1) SA 505(A) at 509E-510B, it was held that a party in motion proceedings may advance legal argument in support of the relief or defence claimed by it even where such arguments are not specifically mentioned in the papers, provided they arise from the facts alleged." In a similar vein, Harms ADP in Van Zyl v Government of the Republic of South Africa & Others, 2008 (3) SA 294 (SCA) par [40], at 706 E said that: "..... It is not open for a party merely to annex documentation to an affidavit and during argument use its contents to establish a new case. A party of obliged to identify those parts on which it intends to rely and must give an indication of the case it seeks to make out on the strength thereof."

Court, same on the applicant's own papers before court is without substance and merit. [4]

[26] It is evident from the papers filed of record, some of which is annexed to applicants own papers, that the resolution authorising the institution and prosecution of the appeal proceedings against the judgment of the district labour court and the stay of the effect thereof by respondent is signed by 3 trustees of respondent.

[27] In terms of the respondents trust deed, also annexed to the applicants papers, and more specifically clause 8.2 thereof, it is specifically recorded that 3 (three) of the trustees form a quorum. The resolution therefore on the face of it is

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[4] In Otjozondu Mining (Pty) Ltd v Purity Manganese (Pty) Ltd, Damaseb JP in an unreported judgment delivered on 26 January 2011 in the High Court of Namibia stated the following in respect of a challenge to authority in motion proceedings:

"[52] It is now settled that in order to invoke the principle that a party whose authority is challenged must provide proof of authority, the trigger-challenge must be a strong one. It is not any challenge : Otherwise motion proceedings will become a hot bed for the most spurious challenges to authority that will only protract litigation to no end. This principle is firmly settled in our practice. It was stated as follows in Scott v Hanekom & Others 1980 (3) SA 1182 and 1190 EG; 'In cases in which the respondent in motion proceedings has put the authority of the applicant to bring proceedings in issue, the courts have attached considerable importance to the failure of the respondent to offer any evidence at all to suggest that the applicant is not properly before the Court, holding in such circumstances that a minimum of evidence will be required from the applicant. This approach is adopted despite the fact that the question of the existence of authority is often peculiarly within the knowledge of the applicant and not his opponent. A *fortiori* is this approach appropriate in a case where the respondent has equal access to the true facts.'

[53] It is now trite that the applicant need to do no more in the founding papers than allege that authorisation has been duly granted. Where that is alleged, it is open to the respondent to challenge the averments regarding authorisation. When the challenge to the authority is a weak one, a minimum of evidence will suffice to establish such authority; Tattersal & Another v Nedcor Bank Ltd 1995 (3) SA 228 J to 229 A. "

valid and enforceable. The fact that Mr Koep, the fourth trustee did not sign the resolution does not take the applicants case any further.

[28] Respondent in terms of their deed of trust therefore duly authorised the prosecution of the appeal on behalf of the respondent and in fact, on the documents contained in the court file did so from 2003 up to date hereof.[5]

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[29] Apart from attacking the validity of this court's judgment on appeal applicant attacks the authority of Mr Tjombe to appear on behalf of the respondent in the present proceedings. Although it strictly is not necessary to deal in detail with this aspect due to the conclusion reached in respect of the status of the appeal judgment I have decided to do so because of the impact that it may have on the order as to costs sought by respondent in this application.

[30] The applicant, in her supplementary affidavit states that the postponement order of Swanepoel, J must be set aside on the following grounds which are quoted *verbatim* hereunder:

"3. I made an interlocutory application dated 18.08.2010 to the Labour Court for a rescission of Judgment, of the Judgment dated 22.08.2010 made by Judge Damaseb on the above-mentioned case.

[5] The judgement in the district labour court was delivered at the end of 2003. The respondent appealed the judgement in terms of the rules of this Court, which appeal was heard during 2008 whereafter this Court delivered its judgment on appeal on the 22nd of February 2010.

4. The Legal Assistance Centre (L.A.C) acted on behalf of the Peace Trust, without the necessary mandate, purportedly on Public Interest.
5. I duly served all the relevant documents on the L.A.C as the purported representative of the Peace Trust.
6. At no time relevant to this interlocutory application did the LAC serve a notice of withdrawal as representatives of the Peace Trust on me. Neither did they refuse to accept the documents.
7. On the 24th August 2010 one Mr Norman Tjombe's private Law Firm filed an intention to oppose and a notice of representation with the Labour Court. I was informed about this on the 27th August 2010, before the hearing when I filed my heads of argument with the clerk of the court.
8. The notices to oppose and representation were not served on myself. Neither an authority nor mandate by the Peace Trust was served on me to allow Mr . Tjombe to defend.
9. The case was set down to be heard on the 27th August 2010 on the Motion Court Roll.
10. My case was the last on the Roll and was heard sometime before 12 O'clock.
11. After I introduced myself, a lawyer whom I do not know got up and said "Norman Tjombe". He did not introduce himself nor did he forward any excuse why Mr Norman Tjombe was not in court himself.

12. I objected that the Legal Assistance Centre was still the representative of record and that Mr Norman Tjombe could not oppose and represent neither could somebody stand in for him.
13. The mainstay of my main submissions was that the Legal Assistance Centre had no authority and mandate from their Board of Trustees to represent the Peace Trust.
14. The Peace Trust had no authority and mandate of their Board of Trustees to litigate.
15. All these submissions were before the judge.
    15.1 I filled in a form given to me by the Clerk to request the Judge to read my submitted documents.
16. I insisted that my case should be heard on the coming Tuesday before the judge.
17. The Judge said it is a Labour case and it could not be heard on the coming Tuesday.
18. The Judge also said that it is common practice for lawyers to stand in for each other. He was satisfied with the notice to appear and represent.
19. The Labour case just before mine was also postponed because it was purportedly opposed. In that case the opposing representative was not in court, only the applicant and no stand in lawyer.
20. My case was postponed for a date to be arranged with the Registrar.

FAILURE OF JUSTICE

It will be submitted that the procedure and the judgment of postponement both constituted a failure of justice on the following grounds:

21. The Court acted on behalf of the respondent, which was not before or in Court and postponed an unopposed matter.
22. The Court allowed a lawyer without any mandate to 'stand in' for another lawyer on the basis of 'practice'. Custom or practice cannot override the rule and the law.
23. The Court acted outside its jurisdiction to nullify the fundamental requirements of mandate and representation and to allow an absentee party standing before Court. "

[31] The "grounds" advanced by the appellant is confusing, contradictory and is not supported by any evidence at all. It however seems that the main contention of the appellant is that of a lack of authority of Mr Tjombe to represent the respondent in this application. This accordingly led to a "failure of justice" which results therein that the order of Swanepoel, J in postponing the application is a nullity.

[32] Apart from the documents referred to in paragraph [9] supra, and referred to by applicant in paragraph [30] supra, respondent as further proof of Mr

Tjombe's authority to act on behalf of the respondent in these proceedings, annexed to its answering affidavit a further extract of the minutes of respondent with the following contents:

"EXRACT FROM THE MINUTES OF THE MEETING OF THE TRUSTEES OF PEACE CENTRE ON 14 SEPTEMBER 2010 AT WINDHOEK

It is resolved that:

1. Confirming that the Trustees resolved on 20 August 2010 to oppose the application filed by **ERICA BEUKES**, it is resolved that PEACE Centre continue to oppose the application filed by **ERICA BEUKES**, wherein is prayed for an order:
   (a) Rescinding the judgment of Judge President Damaseb on 22 February 2010 in the above matter and setting aside the appeal as void (*sic*);
   (b) Granting the cross-appeal in this matter;
   (c) Costs;
   (d) Further and or alternative relief.

2. Confirming that **NORMAN TJOMBE** of Norman Tjombe Law Firm of Windhoek was instructed to act on behalf of the PEACE Centre and that he continued to be instructed and is hereby authorised to act on behalf of the PEACE Centre in the said matter.

3. **SOPHIA MARGARETTE HEDWICH ROSE-JUNIUS**, in her capacity as acting Director and Ex-Officio Trustee of the PEACE Centre, is hereby authorized to sign any documents and or affidavits necessary and or required for the due defending and opposing of the application to its final determination and for the purpose of giving effect to the aforegoing resolution.

Certified a true copy of the original.

Dated at **WINDHOEK** on this **14th** day of **SEPTEMBER 2010.**

_____	_____
SOPHIA MARGARETTE HEDWICH ROSE-JUNIUS	**MAIANNE ERASTUS**
Acting Director and Ex-Officio Trustee	Trustee
PEACE Centre	PEACE Centre
_____	_____
ERIKA VAN WINTERSHEIM	**ONNI ITHETE**
Trustee	Trustee
PEACE Centre	PEACE Centre”

[33] Mrs Rose-Junius after receiving the authority as reflected in the extract of minutes signed a duly executed power of attorney in which Norman Tjombe Law Firm is appointed to act in these proceeding.

[34] It is evident from the contents of these documents that Norman Tjombe Law Firm is properly mandated to act on behalf of the respondent in the present

proceedings. Mr Norman Tjombe is the principal partner of Norman Tjombe Law Firm.

[35] The Legal Assistance Centre, on the documents before me, was never mandated to act on behalf of the respondent in its opposition of the present application

[36] It therefore in the circumstances was not necessary for the Legal Assistance Centre to file a notice of withdrawal of representation, as alleged, by applicant. Nothing in any event prohibits a party, in terms of our rules to appoint more than one firm of attorneys to represent him or her in legal proceedings.

[37] On the papers before this court, Norman Tjombe Law Firm has been duly authorised by the respondent to appear in the present proceedings. The fact that Mr Tjombe requested another legal practitioner to appear in court on respondent's behalf when the matter was to be postponed only (as it became opposed) does not constitute an irregularity let alone a nullity as applicant contends. Even if there was no appearance on behalf of respondent before Swanepoel J on 27 August 2010, the matter could not have been heard on that day due to it having become opposed.

[38] As already indicated hereinbefore applicant shows a complete disregard for the rules of this court. I am alive to the fact that applicant is a layperson in law.[6]

[39] If it therefore only would have been that applicant brought an application without any legal substance I would not have considered the granting of an order of costs against applicant at all, as I have to find that applicant vexatiously and/or frivolously did so.[7]

[40] As already illustrated in the beginning of this judgment, applicant, after the appeal judgment was handed down on 22 February 2010 presented respondent and this court with:

- An application for leave to appeal the judgment and order of Damaseb JP, which application was to be heard on 12 November 2010.

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[6] Mr Tjombe, on behalf of the respondent in the respondent's heads of argument raised several points *in limine* directed at the late filing of the present application as well as applicant's complete disregard for the rules of court. I have however decided not to deal with the points *in limine* but to decide the matter on the merits, i.e. the question of respondent's authority.

[7] Section 118 of the Labour Act, Act no. 11 of 2007 provides that: "Despite any other law in any proceedings before it, the Labour Court must not make an order for costs against a party unless the party has acted in a frivolous or vexatious manner by instituting, proceeding with or defending those proceedings." Section 20 of the Labour Act, Act no. 6 of 1992 provides that: "The Labour Court or any district labour court shall not make any order as to any costs incurred by any party relation to any proceedings instituted in the Labour Court or any such district labour court, except against a party which in the opinion of the Labour Court or district labour court has, in instituting, opposing or continuing any such proceedings acted frivolously or vexatiously." In the recent unreported judgment by this court in Erickson Nangolo v Metropolitan Namibia Ltd and Another, case no LC44/2009, delivered on 31st August 2010, Hoff AJP at p 11 noted the following: "[It has] become "an unfounded practice to simply, boldly, deny authority". This court may well in future consider a special cost order against a litigant who, without any factual foundation boldly denies the authority to institute or to oppose proceedings as a mark of the disapproval of such a tactic." [own brackets]

- An application for review in the Supreme court of Namibia (whilst the application for leave is still pending). The application is brought under Article 25 of the Namibian Constitution.
- An application for the rescission of the appeal judgment. This application was initially set down without the required notice to respondent.
- An application for the rescission of Swanepoel J's order to postpone the application for rescission of the appeal judgment to a date to be arranged with the Registrar. This application also was set down without the required notice to respondent or as provided for in terms of rule 6 of the rules of this court.
- An application for leave to intervene by Hewat Beukes, who is the husband of the applicant. This application again was brought and set down contrary to the provisions of the rules of this court.
- An unsigned notice of set down of the application for rescission of the appeal judgment despite Swanepoel J's order that a date be arranged with the Registrar of this court.

[41] Apart from the aforesaid tyranny of litigation to which applicant has decided to subject this court and the respondent with applicant, in her heads of argument, and documents filed of record, *inter alia* makes the following remarks and/or submissions which are not substantiated by any shred of evidence.

- "No written and lawful resolution has ever been taken by the respondent to chance its legal representation as required by the Deed of Trust and the Law of Trust.
- The purported resolution submitted by Mr Tjombe is pure and unadulterated fraud.
- This evidence placed before the court is that the purported board of trustees was extended from 4 to 8 trustees. The fraudulent resolution to mandate Mr Tjombe was signed by 4 purported board members who did not constitute a quorum.
- The Legal Assistance Centre during the hearing (presumably the disciplinary hearing) held, one sided and conspiratorial liaisons with respondent.
- Mr Tjombe while being a board member of Legal Assistance Centre acts in direct conflict with society's mores to appropriate public moneys from the Legal Assistance Centre while being a board member of same."

  (my own underlining and/or emphasis)

[42] As already stated hereinbefore, applicant did not advance any evidence on which she relies for the submissions referred to hereinbefore. Mr Tjombe submitted that, having regard to the history and nature of the proceedings, that the conduct of the applicant is vexatious. I am in agreement with the submission made by Mr Tjombe as it is evident that applicant, on the papers before this

Court, does not have any, let alone sufficient grounds, for the spurious, irrelevant and inflammatory allegations made.

[43] Mr Tjombe also requested this court to make an order that the costs must be paid in full before the applicant is allowed to proceed with any further processes against respondent. In the exercise of my discretion I however am not inclined to make such an order.

[44] In the result the following order is made:

1. The applicant's application for the setting aside of the postponement ordered by Swanepoel, J is dismissed with costs.

2. The applicant's application for the rescission and/or setting aside of the judgement on appeal by Damaseb JP is dismissed with costs.

3. The applicant's application to allow the cross appeal is dismissed with costs.

4. The costs referred to in paragraphs 1, 2 and 3 *supra* are to be calculated on a scale as between party and party.

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BOTES, AJ

COUNSEL ON BEHALF OF THE APPLICANT: IN PERSON

COUNSEL ON BEHALF OF THE RESPONDENT: MR. N. Tjombe

Norman Tjombe Law Firm