



**NOT REPORTABLE**

CASE NO: SA 9/2019

**IN THE SUPREME COURT OF NAMIBIA**

In the matter between:

**UUKWANGALI TRADITIONAL AUTHORITY  
EUGENE SIWOMBE KUDUMO**

**First Appellant  
Second Appellant**

and

**MINISTER OF URBAN AND RURAL  
DEVELOPMENT  
THE PRESIDENT OF THE REPUBLIC OF  
NAMIBIA  
THE GOVERNOR OF THE KAVANGO WEST  
REGION  
RUDOLF NGONDO  
SEVERINUS SITEKETA  
SIUETELE ELIAS JAPIE PHILLIPUS  
ANDREIES MUPOROSI KAMUKWANYAMA  
HAWINA RENATE SIREMO  
PUIS KANDJIMI  
STEFANUS HAUSIKU MUKUYA  
MAGNUS SITEKETA MPASI  
AMANDUS KAVERA MUHWA**

**First Respondent  
Second Respondent  
Third Respondent  
Fourth Respondent  
Fifth Respondent  
Sixth Respondent  
Seventh Respondent  
Eighth Respondent  
Ninth Respondent  
Tenth Respondent  
Eleventh Respondent  
Twelfth Respondent**

ADAM KABONO	Thirteenth Respondent
SABINA NZOWO	Fourteenth Respondent
KAMUNDIRO BETHILIE NDAHEPA	Fifteenth Respondent
HIMARWA PETRUS KANDJIMI	Sixteenth Respondent
JOSEPH NZOWO	Seventeenth Respondent
EINO SIVANDA	Eighteenth Respondent
ALIPIA MBAVA HIMARWA	Nineteenth Respondent
KRISTINE MUDI HAUSIKU	Twentieth Respondent
CECILIA NANKALI NDARA	Twenty-first Respondent
LEEVI SIRONGO NDARA	Twenty-second Respondent
MARKUS KATANGA	Twenty-third Respondent
REINHOLDA MBWARE	Twenty-fourth Respondent
KATRINA RUKUSU MUTANGARA	Twenty-fifth Respondent
BENHARD HAIMBANGA MUKUVE	Twenty-sixth Respondent

**Coram:** DAMASEB DCJ, SMUTS JA and FRANK AJA

**Heard:** 15 October 2020

**Delivered:** 6 November 2020

**Summary:** This matter was scheduled for hearing on 15 October 2020. Heads of argument of the appellants were filed on 6 October 2020, seven court days prior to the date of hearing and against the requirement contained in rule 17(1) of the Supreme Court Rules (the rules). The result is that the appeal had lapsed. No application for condonation for the late filing of the heads of argument and the reinstatement of the appeal was sought. Appellants argued that the Directions relating to judicial proceedings issued by the Chief Justice in terms of regulation 13(1) of the State of Emergency Covid - 19 Regulations, GN 90, GG 7160, 31 March 2020 (GN 90 of 2020 or the directives) did away with timelines mentioned in the rules and that they could thus file their heads of argument whenever they deemed it suitable to do so.

The Chief Justice was empowered in terms of reg 13 of the State of Emergency – Covid – 19 Regulations: Namibian Constitution, Proclamation 9, GG 7159, 28 March 2020 (Proclamation 9 of 2020) to ‘issue directives’ to among others ‘suspend, extend or relax the procedure and time periods. . .’ provided for in the rules of court during the period of lockdown. Subsequent proclamations, ie Amendment of State of Emergency Covid – 19 Regulations: Namibian Constitution, Proclamation 13, GG 7180, 17 April 2020 (Proclamation 13 of 2020); State of Emergency – Covid – 19: Suspension of Operation of Provisions of certain Laws and Ancillary matters Regulations: Namibian Constitution, Proclamation 16, GG 7194, 28 April 2020 (Proclamation 16 of 2020) and Stage 2: State of Emergency – Covid – 19 Regulations: Namibian Constitution, Proclamation 17, GG 7203, 4 May 2020 (Proclamation 17 of 2020) empowered the Chief Justice to issue directives in respect of all courts in Namibia, however, these powers were not used. No other directives were issued by the Chief Justice aside from GN 90 of 2020 that fell by the way side on 17 April 2020.

*Held that*, the suspension of time periods in GN 90 of 2020 was expressly limited to the ‘lockdown’ period referred to in Proclamation 9 of 2020, ie 28 March 2020 to 17 April 2020, which period was arguably extended to 4 May 2020.

*Held that*, the relevant proclamations and the directives issued by the Chief Justice thus in no way affected the date on which the heads of argument for this matter that was set down for 15 October 2020, had to be filed.

Appeal is struck from the roll with costs.

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## APPEAL JUDGMENT

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FRANK AJA (DAMASEB DCJ and SMUTS JA concurring):

[1] This matter was on the court roll for hearing on 15 October 2020. The heads of argument of the two appellants were filed on 6 October 2020, ie seven court days prior to the hearing of the matter.

[2] Rule 17(1) of the Rules of the Supreme Court (the rules) stipulates that such heads of arguments are to be filed at least 21 days prior to the hearing. Non-compliance with rule 17(1) leads to the lapsing of an appeal.<sup>1</sup>

[3] The result thus is if a prospective appellant files heads of argument late the only way the matter can be dealt with is if an application for reinstatement is made in which condonation, on good cause shown, for the late filing of the heads of argument is sought.

[4] As no reinstatement application was forthcoming from the appellants for their failure to file heads of argument timeously the court raised this aspect with the legal practitioner for the appellants. The legal practitioner submitted that the directives issued by the Chief Justice in respect of the State of Emergency to deal with the

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<sup>1</sup> Rule 17(2).

Covid – 19 pandemic did away with the timelines mentioned in the rules and that they could thus file their heads of argument whenever he deemed it suitable to do so.

[5] A State of Emergency following the outbreak of the Covid – 19 pandemic was declared by Proclamation 7 of 2020.<sup>2</sup> This was followed by the regulations per Proclamation 9 of 2020. Proclamation 9 of 2020 was expressly stated to apply during the ‘lockdown’<sup>3</sup> which was limited to the period of 28 March 2020 to 17 April 2020.<sup>4</sup> Regulation 13 of Proclamation 9 of 2020 granted the Chief Justice powers to ‘issue directives’ to among others, ‘suspend, extend or relax the procedure and time periods . . .’ provided for in the rules of courts.

[6] Per GN 90 of 2020 the Chief Justice issued certain directives. These directives were issued ‘under the powers’ granted to the Chief Justice in Proclamation 9 of 2020 per reg 13 of that proclamation. In directive 9(d) of GN 90 of 2020, the time periods provided for the filing of court documents were suspended for the duration of the lockdown.

[7] The suspension of time periods was expressly limited to the ‘lockdown’ referred to in Proclamation 9 of 2020, ie 28 March 2020 to 17 April 2020.<sup>5</sup> As far as I could establish, the Chief Justice issued no directives other than those contained in GN 90 of 2020 neither did the legal practitioner for the appellants refer to any other

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<sup>2</sup> Declaration of State of Emergency: National Disaster (Covid – 19): Namibian Constitution, Proclamation 7, GG 7148, 18 March 2020 (Proclamation 7 of 2020).

<sup>3</sup> Regulation 1(g) definition of ‘lockdown’.

<sup>4</sup> Regulation 3(3).

<sup>5</sup> Directive 9 read with the definition of ‘lockdown’ in directive 1.

directives. The directives contained in GN 90 of 2020 were the directives on which the legal practitioner for appellants relied upon and which he submitted remained in force subsequent to 17 April 2020.

[8] Proclamation 16 of 2020<sup>6</sup> however did extend the 'lockdown' from 28 March 2020 for the period of its 'lockdown' which was not defined in the regulations. Regulation 9 of Proclamation 16 of 2020 expressly suspended the time periods during the course of its lockdown in the Supreme Court<sup>7</sup> and in the High Court.<sup>8</sup> Once again these regulations only applied during the period of the lockdown. As the proclamation contained those provisions, it was not necessary for the Chief Justice to extend his directives that fell by the wayside on 17 April 2020.

[9] Proclamation 13 of 2020<sup>9</sup> extended the 'lockdown' from 17 April 2020 to 4 May 2020. The regulations contained in Proclamation 13 of 2020 do not repeat the suspension of time limits in the courts but grant the Chief Justice the power to issue directives in respect of all courts in Namibia.<sup>10</sup> 4 May 2020 was the end of the defined 'lockdown'. Subsequent to 4 May 2020, proclamations do not refer to a 'lockdown' but to timelines by reference to a 'specified period'.

[10] Proclamation 17 of 2020<sup>11</sup> deals with regulations for the specified period of 4 May 2020 to 1 June 2020. Once again this proclamation empowered the Chief

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<sup>6</sup> GG 7194, 28 April 2020.

<sup>7</sup> Regulation 9(1) and 9(4).

<sup>8</sup> Regulation 10.

<sup>9</sup> GG 7180, 17 April 2020.

<sup>10</sup> Regulation 13.

<sup>11</sup> GG 7203, 4 May 2020.

Justice to issue directives in respect of all courts. This general power to issue directives was also contained in two further proclamations that created further specified periods from 5 May 2020 to 28 June 2020.<sup>12</sup>

[11] Proclamations relevant to the Covid – 19 pandemic subsequent to the ones mentioned above no longer contained the general empowerment regulation to the Chief Justice nor do they contain any regulation that suspends any time period relevant to any court process. It follows that after 28 June 2020 all time periods stipulated in respect of court processes were back in place and unless those time periods must be calculated from dates going back to essentially April 2020, they will remain unaffected by the regulations and directives designed to deal with the Covid – 19 pandemic.

[12] It seems to me that the suspension of time limits in relation to court processes ended on 4 May 2020 per Proclamation 16 of 2020<sup>13</sup> which was the last proclamation that referred to a 'lockdown' and which expressly provided for the suspension of court timelines during the 'lockdown'. Thereafter, a general power was granted to the Chief Justice to issue directives during specified periods which power was not used. This general power was terminated with Proclamation 21 of 2020 on 20 June 2020 from

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<sup>12</sup> State of Emergency – Covid – 19: Further Suspension of Operation of Provisions of certain Laws and Ancillary matters Regulations: Namibian Constitution, Proclamation 18, GG 7204, 4 May 2020 (Proclamation 18 of 2020) extended the lockdown from 5 May 2020 to 1 June 2020 and Amendment of Stage 2: State of Emergency – Covid – 19 Regulations: Namibian Constitution, Proclamation 21, GG 7225, 1 June 2020 (Proclamation 21 of 2020) extended the lockdown from 2 June 2020 to 28 June 2020.

<sup>13</sup> The period of efficacy of Proclamation 16 of 2020.

which date the proclamations no longer contained the general provision granting the Chief Justice powers to issue directives.

[13] The relevant proclamations and the directives issued by the Chief Justice thus in no way affected the date on which the heads of argument for this matter that was set down for 15 October 2020, had to be filed.

[14] It thus follows that the appeal had indeed lapsed as a result of the fact that the heads of argument of the appellants were not timeously filed. As no application for the reinstatement (inclusive of a condonation application for the late filing of the heads of argument) was made the inevitable consequence is that the matter must be struck from the roll.

[15] In the result, the following order is made:

The matter is struck from the roll with costs.

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**FRANK AJA**



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**DAMASEB DCJ**

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**SMUTS JA**

APPEARANCES

APPELLANTS:

K Amoomo

Of Kadhila Amoomo Legal Practitioners,

Windhoek

TENTH RESPONDENT:

N Tjombe

Of Tjombe – Elago Incorporated,

Windhoek