REPUBLIC OF NAMIBIA REPORTABLE

HIGH COURT OF NAMIBIA MAIN DIVISION, WINDHOEK

JUDGMENT

Case no: A 66/2015

In the matter between:

JOHANNES KAMBINDA KAMEYA **APPLICANT**

And

THE CHIEF OF THE NAMIBIAN DEFENCE FORCE **FIRST RESPONDENT**
THE CHIEF OF STAFF: HUMAN RESOURCES **SECOND RESPONDENT**
THE MINISTER OF DEFENCE **THIRD RESPONDENT**
THE PRESIDENT OF THE REPUBLIC OF NAMIBIA **FOURTH RESPONDENT**

Neutral citation: *Kameya v The Chief of the Namibian Defence Force* (A 66-2015) [2015] NAHCMD 92 (16 April 2015)

Coram: PARKER AJ
Heard: **30 March 2015**
Delivered: **16 April 2015**

Flynote: Administrative law – Review – Application to review act of administrative official – Such application must be brought in terms of rule 76 of the rules – Court held that failure to comply with rule 76 is fatal – Effect of such failure is that there is no application to review properly before the court – Court held that it would therefore be wrong and illogical for the court to grant interim interdict pending finalization of a review application where such application did not exist – Consequently, the court struck the application from the roll with costs.

Summary: Administrative law – Review – Application to review act of administrative official – Such application must be brought in terms of rule 76 of the rules – Failure to comply with rule 76 is fatal – In the same notice of motion applicant brought application for interim interdict and application to review – Applicant prayed the court to determine both applications on the basis of urgency – Court refused to grant the application for both interim relief and to review – Court reasoned that it would be wrong and illogical to grant the interim relief pending the finalization of the review application when such application did not exist – Consequently, court struck the application from the roll with costs.

ORDER

The application is struck from the roll with costs.

JUDGMENT

PARKER AJ:

[1] The applicant launched an application by notice of motion, and seeks the relief set out in the notice of motion. The application is for interim interdict and to review the decision of an administrative official. The applicant prays the court to hear the matter on the basis of urgency. The respondents moved to reject the application; and in that behalf, they raised preliminary points. Those points which relate to the interpretation and application of rule 65, in contradistinction to rule 76, are not points *in limine* per se; but they are relevant in determining the point *in limine* on the issue of whether the court should grant the indulgence sought by the applicant that the application be heard as a matter of urgency.

[2] The applicant seeks review of 'the decision of the first respondent, made on 18 March 2015 to transfer the applicant from Windhoek to Grootfontein' (para 4 of

the notice of motion). In the same notice of motion (para 5), the applicant seeks interim interdict to restrain the first respondent from implementing the 18 March 2015 decision pending the review of that decision. Thus, in the same application the applicant has launched a review application contemplated in rule 76 of the rules and an application for interim relief contemplated in rule 65 of the rules.

[3] Confusion is created, with respect, in the inelegant way in which the notice of motion has been framed. It seem to me unclear as to which of the relief sought – review of the decision of the first respondent (under rule 76 of the rules) or interim interdict (under rule 65) – is the court called upon to determine on urgent basis? In this regard, I should say, the practice of the court, which is well entrenched, is that such applicant would launch a review application (the main application for final relief) under rule 76 and also launch an application for interim relief under rule 65, read with rule 73 (urgent application) pending the finalization of the main application wherein the applicant prays the court to hear the interim relief on the basis of urgency (rule 73) and asks the court to order the status quo to remain undisturbed until the finalization of the review application (the main application).

[4] Such approach or practice is not only elegant but it is also sensible; not least because if the interim relief is granted, the decision sought to be attacked in the main application is put on hold, unimplemented, until the finalization of the main application. In that event, the applicant does not lose out even if the main application is heard in the ordinary course. For the avoidance of misunderstanding the proposition I have put forth, I hasten to add that it may not be improper for an applicant to move the interim relief application and a review application in the same notice of motion, so long as rule 76 is complied with and the two applications are delineated clearly for all to see. Some practitioners have applied for interim relief and review (or other final relief) in the same notice of motion wherein they have clearly delineated the two different applications by embossing the letter ‘A’ on the interim relief application, and the letter ‘B’ on the main application for final relief. And they have prayed the court to hear the interim relief application on the basis of urgency, pending the finalization of the main application for final relief. As I have said previously, if that is done, and the interim relief application is successful, the applicant does not lose out, even if the main application is heard in the ordinary course.

[5] In the instant case what the applicant has done is this. He has moved for interim relief and judicial review relief in the same notice of motion without a clear delineation of the two different sets of relief, and, what is more, without complying with rule 76 of the rules as respects the application to review.

[6] Thus, in the manner in which the application has been launched, particularly the way in which the notice of motion has been formulated and the way the prayer that the matter be heard on urgent basis has been put forth, the applicant has put himself in a deep problem from which he cannot extricate himself, as I now demonstrate. In this regard, I should, with the greatest deference to Mr Mukonda, counsel for the applicant, say that it is counsel's misreading of rules 65 and 76 that has led to this unfortunate state of affairs; in particular, counsel's misreading of rule 76, a rule that specifically deals with judicial review of acts of administrative bodies and administrative officials, *inter alios*. See *Black Range Mining (Pty) Ltd v The Minister of Mines and Energy NO and Others* Case No. A 305/2009 (Unreported).

[7] I consider that the application to review the decision of the first respondent, an administrative official within the meaning of art 18 of the Namibian Constitution, read with rule 76, does not, as Mr Chibwana submitted, comply with rule 76 (in particular rule 76(2) and (4)). See *Black Range Mining (Pty) Ltd v The Minister of Mines and Energy NO and Others*. The legal consequence of this conclusion is this: I hold that there is no application properly before the court to review the decision of the first respondent. That being the legal reality at play here, it would be illogical and totally wrong for the court to grant, on urgent basis, or, indeed, on any basis, an interim relief pending the finalization of a review application when that did not exist.

[8] Based on these reasons, I make the following order:

The application is struck from the roll with costs.

C Parker

Acting Judge

APPEARANCES

APPLICANT : R Mukonda
Of Mukonda & Co. Inc., Windhoek

RESPONDENTS: T Chibwana
Of Government Attorney, Windhoek