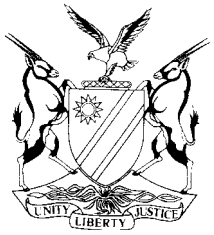

REPORTABLE

CASE NO. A 208/2011

IN THE HIGH COURT OF NAMIBIA

In the matter between:

EWALD KATJIVIKUA **APPLICANT**

and

THE MAGISTRATE: MAGISTERIAL DISTRICT OF GOBABIS **1st RESPONDENT**

JESAYA EWALD KATJIVIKUA **2nd RESPONDENT**

CORAM: **CORBETT, A.J**

Heard on: 31 October 2011

Delivered on: 4 November 2011

JUDGMENT

CORBETT, A.J: .

[1] On 24 August 2011 the first respondent granted an interim protection order to the second respondent on an *ex parte* basis, in terms of the Combating of Domestic Violence Act, No. 4 of 2003 ("the Act"). The order was subsequently amended on 10 October 2011 by the first respondent.

[2] The applicant maintains that both the granting of the initial protection order and the further order of the Court amending the initial order are irregular. The applicant accordingly brings this application on an urgent basis seeking an order declaring the interim protection order, as amended, to be a nullity, invalid and of no force and effect. In the alternative, the applicant seeks an order reviewing and setting aside the interim protection order. Costs are sought against both the respondents.

[3] The applicant is the 33 year old son of the second respondent, the latter being at the advanced age of 89 years. The present dispute has its origins in a most unfortunate "blood feud" within the Katjivikua clan. It is common cause that the second respondent and his wife are currently estranged and that certain of the children have taken sides with either the second respondent or his estranged

wife. The applicant acquired ownership of the farm “Toekoms” in September 2003 and resided on the farm until the interim protection order in this matter was granted. The second respondent lives on the farm “Vredehof” in the same district and there would appear on the disputed facts to be an overlap between the farming operations on the two farms. As to who precisely owns what cattle and other livestock on the Farm “Toekoms” is disputed. The papers are replete with accusations and counter-accusations of theft of cattle and other livestock belonging to the second respondent by the applicant and *vice versa*; allegations of malicious damage to property by the one to the other’s property; and threats of assault allegedly made by the applicant on the second respondent and his employees. The applicant has on no less than three occasions in recent months laid criminal charges against the second respondent. The level of acrimony between the applicant and the second respondent is most unfortunate. It is not necessary for the Court to make a finding in regard to many of these disputed facts, except insofar as the facts are relevant to the issue at hand, namely the validity or otherwise of the interim protection order granted by the first respondent against the applicant.

[4] The thrust of the argument presented by Mr Denk, on behalf of the applicant, was that the first respondent had no jurisdiction to grant the interim protection order, and in amending the order, he acted *ultra vires* his powers in terms of the Act. It was also contended that the first respondent, in amending the order, failed to afford the applicant the right to be heard. It was submitted by Ms

Van der Westhuizen, who appeared on behalf of the second respondent, that the application was not urgent and that, in any event, the relief sought in this application was not competent, being premature, and indeed without merit. The first respondent simply opposes the matter on the narrow basis of the cost order that is sought against him. I will deal with these issues in turn.

JURISDICTION TO GRANT THE INTERIM PROTECTION ORDER

[5] In terms of section 4(1) of the Act any person who is in a domestic relationship may, in the manner provided for in section 6, apply for a protection order against another person in that domestic relationship. Section 3 of the Act, under the heading "*definition of domestic relationship*" provides as follows:

> "**3. (1) For the purposes of this Act a person is in a "domestic relationship" with another person, if, subject to subsection (2) –**
>
> **(a) …;**
>
> **(b) …;**
>
> **(c) ….;**
>
> **(d) they are parent and biological or adoptive child;**

(e) they –

(i) are or were otherwise family members related by consanguinity, affinity or adoption, or stand in the place of such family members by virtue of foster arrangements; or

(ii) would be family members related by affinity if the persons referred to in paragraph (b) were married to each other;

and they have some connection of a domestic nature, including, but not limited to –

(aa) the sharing of a residence; or

(bb) one of them being financially or otherwise dependent on the other; or

(f) …"

[6] In argument Mr Denk focused on section 3(1)(d) in contending that the first respondent did not have jurisdiction to grant the interim protection order. Since the definition of a child in the Act is a person under the age of 18 years it follows that the Court could not derive its jurisdiction from this subsection. Ms Van der Westhuizen contended that the Court's jurisdiction is rather to be

founded in section 3(1)(e) of the Act. The second respondent's reliance upon this section 3 is somewhat cryptic. He states:

> "**I do not take issue with the fact that the applicant is above 18 years of age. The applicant however clearly did not have regard to section 3(1)(e) of the Act which clearly included the domestic relationship between the applicant and me.**"

No reference is made to specific facts to substantiate this conclusion. However, in view of the approach I take in this matter, it is unnecessary to deal comprehensively with this issue. On my reading of the Act, the legislature intended by the enactment of section 3(1)(e) to bring within its reach a very broad spectrum of familial relationships of a domestic nature, with the purpose that protection orders may be sought by aggrieved family members without having to seek recourse to more expensive and less expeditious civil or criminal proceedings to keep the family peace. Whilst the relationship between the applicant and the second respondent is one of acrimony, on the facts put up by the second respondent (which in the light of the *Stellenvale* rule I am obliged to accept) suggests that there is some financial dependency between the applicant and the second respondent in respect of the payment of the instalments to Agribank for the Farm "Toekoms". This fact, in my view, clothed the first respondent with jurisdiction to hand down the interim protection order.

THE CONTENT OF THE INTERIM PROTECTION ORDER

[7] In making application for the interim protection order, the second respondent deposed to an affidavit in terms of section 6(2) of the Act. In the affidavit he makes allegations of incidents of economic abuse, and sets out the facts upon which he relies for the relief sought. These relate to allegations of the applicant's theft of his livestock; that the applicant placed padlocks on the entrance gate to the farm "Toekoms" and prevented the second respondent from gaining access to the farm; that the applicant on several occasions chased the second respondent's farm workers away from the farm "Toekoms"; that the applicant threatened to assault the second respondent on several occasions; that the applicant, through these actions, had generally frustrated the second respondent's farming operations; that the applicant has engaged in hunting activities on the farm "Toekoms" without the second respondent's consent; and that the applicant killed one of the second respondent's goats without the latter's consent. The second respondent then concludes his affidavit by stating:

> "*14. I therefore pray that the respondent be ordered to desist from subjecting me to acts of violence and abuse.*
>
> *15. In light of the aforegoing, the protection order which I hereby apply for should restrain the respondent from subjecting me to domestic violence, more specifically, physical abuse, economic abuse and*

> *emotional, verbal or psychological abuse, threats or attempts to carry out any of these threats***.**"

I pause to mention that in the affidavit there are no allegations that the applicant committed actual acts of physical violence against the second respondent.

[8] The application for the interim protection order was made on Form 1 contained in Regulation 2 of the Regulations promulgated in terms of the Act. It appears that, if reference is had to the Regulations themselves, the document attached to the founding papers professing to be the application in terms of Form I is actually only the first page of Form 1 and the subsequent pages constitute the pages referred to in Form 5 contained in Regulation 6, being the standard form interim protection order granted in terms of section 8 of the Act. It is unclear as to whether this confusion has its origins in the form used by the Magistrate or rather arises from a transposal of documents by the applicant's legal practitioners in preparing the papers. The first respondent, in deposing to an answering affidavit, did not address this issue.

[9] The *pro forma* nature of the Forms is presumably to assist the complainant in making application for the protection order and at the same time assists the Magistrate in that Form 5 sets out the full range of the orders that the Court may hand down as part of the interim protection order. The Magistrate can simply indicate in the appropriate spaces on Form 5 which of the broad standard form orders shall become operative should he or she grant the order. As with

any form the danger exists that the person completing it may not take care to do so clearly and with full regard to all the sections which require attention. The end result is that the *pro forma* form, instead of facilitating clarity in the administration of justice and the orders of Court, becomes a sloppy administrative process with little attention being given to crucial details. This is precisely what happened when the Magistate filled in the Form 5 in granting the interim protection order in this matter.

[10] Form 5 sets out the particulars of the complainant and the respondent and in paragraph (b) under the heading “Order of Court” two options are presented to the presiding officer, firstly that the application for a protection order is dismissed, and secondly, that the application for the protection order is granted “*as set out on the following pages*”. I pause to note that, although in the context of an application in terms of section 6 of the Act it must be assumed that reference in the Form is to an interim protection order, paragraph (b) does not distinguish between an interim and a final order. However, should page 1 of Form 5 have been used, there would have been no doubt that reference was being made to an interim order. Presumably for the order to make sense the Magistrate must either indicate on the dotted line in paragraph (b) which order he or she is granting or delete the option that is not to apply. The Magistrate did not fill in this part of the form, nor did he indicate which option constitutes the order of court. Thus *ex facie* the order itself, there is no indication whether the order was granted or not.

[11] The problems do not end there. In paragraph 2 of the Form under the heading "*Order to Respondent*" the respondent is ordered not to commit "*any further acts of domestic violence against the complainant or the complainant's dependents*". It further states:

> "*You are ordered to refrain from all acts of domestic violence and in particular from the types of violence indicated in the list below:*
>
> *physical abuse;*
>
> *sexual abuse;*
>
> *economic abuse (including destruction or damage to property);*
>
> *intimidation;*
>
> *harassment (including stalking);*
>
> *trespass;*
>
> *emotional, verbal or psychological abuse;*
>
> *threats or attempts to carry out any of these acts;*
>
> *exposing a child to acts of domestic violence against another person.*"

Someone – it being unclear whom – but perhaps the first respondent - has underlined certain of the categories of violence indicated in the list, namely economic abuse, trespass, emotional, verbal or psychological abuse and threats or attempts to carry out any of these acts. However, it is not made clear in the order whether the interim protection order includes the wide ambit of all the types of violence listed, or only those underlined. It is apparent that certain of these

categories of domestic violence, such as sexual abuse, are not applicable to this case.

[12] In paragraph 3 of the Form – which includes "*no-contact provisions*" - it specifically states that the respondent (the applicant in these proceedings) is to comply with the provisions ticked on the Form. None of the provisions are ticked. Paragraph 5 of the Form under the heading "*Additional Orders*" provides that the Clerk of the Court must forward a copy of the protection order to the station commander of a police station which must be specifically indicated in the order "*who must cause police protection … to be provided to the complainant … until such time as the interim protection order is made final …*". No police station is indicated in the Form.

[13] These are all examples of the inept nature of the order handed down by the first respondent. This is a strong indication of the complete failure by the first respondent to apply his mind to the matter and to hand down an order that is clear, unambiguous, and indeed intelligible to the person subject to its ambit. In fact, the only indication on the Form that the first respondent has applied his mind to the matter is a signature above the word "magistrate" at the bottom of the Form together with the date. Even the official Ministry of Justice stamp which appears next to the Magistrate's signature is not his, but the Clerk of the Court's stamp. On this basis alone, I find that the interim protection order falls to be set aside on review.

THE AMENDMENT TO THE INTERIM PROTECTION ORDER

[14] The return date for the interim protection order was 10 October 2011. On that date the second respondent's legal representative was present but the applicant's legal representative, Mr Louw, was unavailable and did not attend the hearing. Correspondence was furnished to the first respondent requesting on behalf of the applicant that the matter be set down for 6 December 2011 to determine a new date for hearing. The second respondent's legal representative, Mr Rukoro, addressed the Court and stated:

> "*Mr Rukoro:…At this stage, the complainant is not receiving any protection we have requested from the Court. The Respondent is still at the farm, frustrating the complainant. We therefore ask that the interim order be amended no contact provisions.*
>
> *Court: It must have been an oversight, that the no contact provisions were inadvertently omitted. Only trespassing was ticked.*
>
> *Respondent: I would like Mr Louw to be present.*
>
> *Mr Rukoro: We are ready to proceed today with the hearing or apply for the amendments.*
>
> *Court: There is no reason as to why Mr Louw could not be here today, protection orders are urgent applications. I am of the opinion that without the amendments as proposed by Mr Rukoro the interim order, which will be extended at the request of the respondent, will not afford the complainant any protection.*" (sic)

The Magistrate makes reference to only "*trespass*" being ticked on the Form. This statement is not borne out by the Form before Court. It is self-evident that, as the owner, the applicant cannot trespass on the farm "Toekoms". The definition of "*domestic violence*" contained in section 2(1)(f) of the Act refers to –

"**entering the residence or property of the complainant, without the express or implied consent of the complainant, where the persons in question do not share the same residence**".

[15] The applicant states that he is in fact the owner of the farm "Toekoms". He attaches to the founding papers the deed of transfer in respect of the farm which confirms that the applicant obtained ownership of the farm in 2003. This much is common cause. However, the second respondent claims that the registration of the farm in the applicant's name was no more than a logistical arrangement in order to finance the purchase of the farm through Agribank. The second respondent claims that due to his advanced years the Bank would not have granted him a loan for the purchase of the farm. That might have been the understanding. However, irrespective of the manner in which the second respondent might want to couch the arrangements between himself and the applicant, the applicant still enjoys the right of ownership of the Farm "Toekoms" with the attendant rights attached thereto. These would include the right to possession of the farm "Toekoms" together with the right to reside thereon. The farm "Toekoms" is not the residence or property of the complainant. It is evident from the affidavit deposed to by the second respondent in support of the

application for the interim protection order that the gravamen of the complaint refers to alleged misconduct of the applicant on the farm “Toekoms”. This further misdirection by the Magistrate serves to underline the fact that his order cannot stand.

[16] At the hearing on 10 October 2011 the Magistrate proceeded to extend the interim protection order to 6 December 2011 with substantial amendments, which included that:

1. the applicant was ordered not to come near the second respondent, wherever the latter may be;
2. a police officer from the Gobabis Police Station must accompany the applicant to collect his personal belongings from the farm “Toekoms”;
3. the applicant was ordered not to enter or come near the farm “Toekoms”; and
4. the applicant was ordered not to communicate in any way with the second respondent.

[17] The amendments to the interim protection order were far-reaching. It is also undisputed that at the time that the interim protection order was granted by the first respondent, the applicant and his family were resident on the farm “Toekoms”. This much is clear from the application form filled in by the second respondent as part of the application for the interim protection order where the

home address of the applicant is referred to as the farm “Toekoms”. This accords with what the applicant states in his founding affidavit. Accordingly, the effect of the interim protection order, as amended, is that the applicant is removed from his home on the farm “Toekoms”, together with his personal belongings and may not enter or come near the farm “Toekoms”. This constitutes a considerable deprivation of his rights as the owner of the property. It also involves a curtailment of his property rights entrenched by Article 16 of the Constitution. He states that he has been effectively evicted from his own property without just cause. The applicant refers to a number of further negative consequences relating to his livestock and livelihood derived from farming operations. He stresses that the livestock are his income and that they form the basis of his ability to repay the loan with Agribank, the most recent instalment of N$50,000.00 being due and payable by the end of October 2011. This would be paid through the applicant selling some of his cattle to raise sufficient money for the instalment. He fears that should he default on this payment, the remaining balance on the loan would immediately become due and payable. For these reasons he states that the matter is urgent. These allegations are strenuously placed in issue by the second respondent. However, given the view I take in this matter it is unnecessary to make a finding on these factual disputes.

[18] The applicant contends that the amendment granted by the first respondent to the interim protection order on 10 October 2011 was similarly irregular and of no force and effect. It is contended on behalf of the second

respondent that the first respondent, in amending the interim protection order, exercised his rights to correct the order which had omitted to include provisions, such as the "*no-contact*" provision. It is evident from the transcript of what transpired before the first respondent on 10 October 2011 that the amendment was initiated by Mr Rukoro by way of a submission from the bar. The first respondent then conceded that his failure to include the "*no-contact*" provision was an oversight and proceeded to make the amendments to the order, as referred to earlier.

[19] The statutory authority to do so would appear to be that contained in section 17 of the Act under the heading "*Modification or cancellation of protection orders*". It provides as follows:

> "**17. (1) The following persons may, in writing, apply to the court which granted a protection order requesting the modification or cancellation of such protection order –**
>
> **(a) the complainant;**
>
> **(b) an applicant; or**
>
> **(c) the respondent.**

(2) Where a person referred to in subsection (1)(a) or (b) wants to cancel or modify a protection order he or she must, in the prescribed manner submit an application to that effect to the clerk of court and that application must be accompanied by an affidavit and any other prescribed information.

(3) …

(4) If the application referred to in subsection (2), is for modification of a protection order, the court must proceed as if the application for modification were an original application for a protection order and, subject to necessary changes, the procedure set out in sections 9, 10, 11 and 12 apply in respect of the application".

[20] It is evident from the record that there was not the slightest attempt by the first respondent to require that the second respondent comply with the peremptory provisions of section 17(2) of the Act when he granted the modification or amendment to the interim protection order. There was no application together with an affidavit deposed to by the second respondent. An application from the bar simply does not constitute compliance with the Act. That the interim protection order was amended in this arbitrary manner in contravention of the procedure provided for in the Act amounts, in my view, to a gross irregularity in the proceedings. This constitutes a further basis for the reviewing and setting aside of the interim protection order.

THE REVIEWABILITY OF THE INTERIM PROTECTION ORDER

[21] It is contended on behalf of the second respondent that, even should there be grounds for review, this Court is not entitled to review the interim protection order since the order is not a final order.

[22] In terms of section 20(1)(d) of the High Court Act, No. 16 of 1990, the grounds upon which the proceedings of any lower court may be brought under review by the High Court include a "*gross irregularity in the proceedings*". Ms Van der Westhuizen, on behalf of the second respondent, takes the point that it is not competent for this Court to review and set aside the interim protection order, since the proceedings before the Magistrate's Court are not yet concluded. She contends that the applicant could have instead pursued remedies in terms of the Act, such as anticipating the return date of the interim order.

[23] In the matter of ***Rynders v Bankorp Ltd t/a Trust Bank and Others, 1995 (2) SA 494 (W)***, MacArthur J dealt with a situation where a Magistrate had granted a provisional winding-up order and on the return day an application was brought by the respondents seeking the setting aside of the winding-up order. The applicant alleged that the Magistrate had committed an irregularity in the proceedings. It was argued in this matter that the applicant had certain remedies it could have sought before the inferior Court. In this regard the Court stated:

"**It was further submitted that the applicant had failed to exhaust its remedies in the magistrate's court and he could, for example, have asked for extra time or even anticipated the rule. In my view these remedies would be inappropriate here as it might for example be construed as an acceptance of the provisional order granted. It seems to me that the magistrate was not empowered to deal with the matter in the first place and, in the absence of waiver or agreement, which clearly does not apply in this case, that is the end of the matter. I can see no basis for requiring a litigant in those circumstances to pursue other remedies in the lower court. (See: *Van Graan v Smith's Mills (Pty) Ltd* 1962 (3) SA 170 (T))** [1]

[24] It has further been stated that:

"**[21] It is generally accepted that this Court will not readily intervene in lower court proceedings which had not yet terminated, unless grave injustice may otherwise result or where justice may not be obtained by other means…**

[22] Intervention on review will be justified in the case of gross irregularity which has caused, or is likely to cause, prejudice to the applicant … .

[1] at 497 B - D

> **[28] Under the circumstances, the applicant was fully justified in approaching this Court, despite the fact that the liquidation order was only provisional and the liquidation proceedings were hence not yet terminated. The extremely serious and aggravating nature of the irregularity committed by the first respondent stridently called for intervention by this Court to right the obvious wrong done to the fifth respondent. This Court is, in fact, enjoined, in the circumstances of the case to make full use of its inherent power to review and set aside the irregular proceedings.**" [2]

[25] In the circumstances, I find that the applicant was entitled to approach Court to seek the review and setting aside of the interim protection order granted by the first respondent, despite the fact that the proceedings have not as yet been concluded. This is particularly so where, as I have found, the impugned order was inept and the "amendment" thereof was granted in contravention of the peremptory provisions of section 17 of the Act, rendering such order reviewable both in terms of the inherent powers of this Court at common law and in terms of the express provisions of section 20 of the High Court Act. There is no basis in law to require that the applicant first exhaust his remedies before the Gobabis Magistrate's Court.

[2] Adonis v Additional Magistrate, Bellville and Others, 2007 (2) SA 147 (C), 154, paras [21] – [22]; 156, para [28]

URGENCY

[26] The second respondent disputes that the applicant is liable to pay the instalments for the bond in respect of the Farm "Toekoms", alleging that he in fact pays these amounts. It was contended by Ms Van der Westhuizen, on behalf of the second respondent, that, in any event, the applicant had failed to make out a case for urgency in that the applicant had not established that he could not obtain substantial redress in due course. This contention was based on the submission that in terms of section 11(2) of the Act a respondent (i.e. someone who is the subject-matter of an interim protection order), may request the Clerk of the Court to set an earlier date for the enquiry. It is apparent from this sub-section that the discretion lies in the Clerk of the Court. It was further contended that, in any event, on 6 December 2011 the applicant could obtain substantial redress by appearing in Court and seeking the discharge of the interim protection order.

[27] This Court has emphasized that the urgency of commercial interests may justify the invocation of Uniform Rule of Court 6 (12) no less than any other interests and that each case must depend upon on its own circumstances. [3] In exercising this discretion, there are varying degrees of urgency. [4]

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[3] Twentieth Century Fox Film Corporation and Another v Anthony Black Films (Pty) Ltd, 1982 (3) SA 582 (W), 586 G
Approved in Bandle Investments (Pty) Ltd v Registrar of Deeds and Others, 2001 (2) SA 203 (SC), 213 E - F

[4] Luna Meubelvervaardigers (Edms) Bpk v Makin and Another, 1977 (4) SA 135 (W);
Approved in Sheehama v Inspector General, Namibian Police, 2006 (1) NR 106 (HC);
Clear Channel Independent Advertising Namibia (Pty) Ltd v Transnamib Holdings Ltd, 2006 (1) NR 121 (HC)
Bergmann v Commercial Bank of Namibia Ltd, 2001 NR 48 (HC)

[28] Whilst there is some truth in the argument that the applicant could obtain substantial redress in due course on 6 December 2011, in my view, this submission ignores the situation where the applicant claims that his constitutional rights to the enjoyment of his property under Article 16 have been violated by the interim protection order and that the order itself falls to be set aside as having no basis in law. For the purposes of considering the matter of urgency, I am obliged to accept that the allegations of the irregular nature of the order are sound in law[5]. On this basis, I can find no justification to require that the applicant marks time for a further five weeks where his rights have been infringed on the basis of an interim protection order that was erroneously granted. This is even more so where the effect of the order makes serious inroads on the applicant's common law right of ownership and indeed his property rights protected by Article 16 of the Constitution, more particularly the applicant's right to reside in his home on the farm "Toekoms". In the circumstances, I find that the application was correctly brought as one of urgency and condonation is granted under Rule 6 (12).

COSTS

[29] There is no reason why, in the circumstances, the costs should not follow the result as far as the second respondent is concerned. However, the applicant also seeks costs *de bonis propriis* against the first respondent on the basis that the first respondent committed a gross irregularity in the proceedings. Ms

[5] Bandle Investments, *supra,* at 213E - F

Machaka, who appeared on behalf of the first respondent, resisted such a cost order. In fact, the only basis of opposition was in respect of the cost order. She contended that the first respondent had not made himself a party to the merits of the matter and was only opposing on the narrow basis of resisting a cost order against him. Reliance was placed on the matter of the **Regional Magistrate Du Preez v Walker, 1976 (4) SA 849 (A)**, where the Court considered the circumstances under which it would be open to a Court, in its discretion, to grant an order *de bonis propriis* against a judicial officer, whose actions in the performance of his or her duties as such have been corrected or set aside on review. Van Winsen, A.J.A. said[6]:

> "**It is a well-recognised general rule that the Courts do not grant costs against a judicial officer in relation to the performance by him of such functions solely on the ground that he has acted incorrectly. To do otherwise could unduly hamper him in the proper exercise of his judicial functions … .**
>
> **There are, however, exceptions to this rule. Thus if the judicial officer chooses to make himself a party to the merits of the proceedings instituted in order to correct his action and should his opposition to such proceedings fail, the Court may, in its discretion, grant an order for costs against him … .**

[6] At 852H – 853E

> **It is also a recognised exception to the general rule that if it is established that the judicial officer's decision has been actuated by malice the Court setting aside or correcting such decision may grant costs against him even although he has not made himself a party to the merits of the proceedings.**"

[30] In the matter of *Ntuli v Zulu and Others, 2005 (3) SA 49 (N)* the Court dealt with the argument advanced on behalf of a judicial officer in the context of a procedural irregularity, as follows[7]:

> "**The argument advanced on behalf of the second respondent is as follows: It is not competent to award costs against a judicial officer in his/her official capacity, as such an award is in effect an award against the State or the relevant government department which employs the judicial officer concerned. The State and/or the department concerned is not a party to the review proceedings and has, therefore, no interest whatsoever in the outcome of these proceedings. Moreover the State and/or the relevant department has not made itself a party to the proceedings by opposing the proceedings for review. It was further submitted that, unlike the position of officials performing administrative functions, the State has no power of control or supervision over a judicial officer in the conduct of judicial proceedings. The judicial officer exercises a purely personal discretion and is not a servant of the State**".

[7] at 52C - I

[31] The irregularities *in casu* resulted from the first respondent's lack of attention to the detail in filling in the Form constituting the interim protection order and his overlooking the provisions of section 17 of the Act. I am disinclined to the view that such oversight constitutes an irregularity of the nature requiring that the first respondent be mulcted in costs, let alone costs *de bonis propriis*. I accordingly decline an order in these terms.

[32] In view of the conclusions I have reached in this matter, the order I make is:

1. The applicant's non-compliance with the forms and service provided for by the Rules of this Court is condoned and the matter is heard as one of urgency as contemplated by Rule 6 (12).

2. The protection order issued by the first respondent on 24 August 2011, and amended by the first respondent on 10 October 2011, is hereby reviewed and set aside.

3. The second respondent is ordered to pay the costs of this application.

_____

CORBETT, A.J

ON BEHALF OF THE APPLICANT: Adv. A Denk
Instructed by Tjitemisa &

Associates

ON BEHALF OF THE FIRST RESPONDENT: Ms C. Machaka
Instructed by the Government Attorney

ON BEHALF OF THE SECOND RESPONDENT: Adv. C. Van der Westhuizen
Instructed by Lorentz Angula Incorporated