

**REPUBLIC OF NAMIBIA**



**HIGH COURT OF NAMIBIA, MAIN DIVISION, WINDHOEK**

**RULING *I.T.O.* PRACTICE DIRECTIVE 61**

CASE NO: HC-MD-CIV-MOT-GEN-2018/00227

In the matter between:

**MINISTER OF FINANCE** **1<sup>st</sup> APPLICANT**

**NAMIBIA NATIONAL REINSURANCE CORPORATION LIMITED** **2<sup>nd</sup> APPLICANT**

and

**HOLLARD INSURANCE COMPANY OF NAMIBIA LIMITED** **1<sup>st</sup> RESPONDENT**

**HOLLARD LIFE NAMIBIA LIMITED** **2<sup>nd</sup> RESPONDENT**

**SANLAM NAMIBIA LIMITED** **3<sup>rd</sup> RESPONDENT**

**SANTAM NAMIBIA LIMITED** **4<sup>th</sup> RESPONDENT**

**TRUSTCO INSURANCE LIMITED** **5<sup>th</sup> RESPONDENT**

**TRUSTCO LIFE** **6<sup>th</sup> RESPONDENT**

<b>OUTSURANCE INSURANCE COMPANY OF NAMIBIA LIMITED</b>	<b>7<sup>th</sup> RESPONDENT</b>
<b>OLD MUTUAL LIFE ASSURANCE COMPANY NAMIBIA LIMITED</b>	<b>8<sup>th</sup> RESPONDENT</b>
<b>JACOBUS CELLIERS LAMPRECHT</b>	<b>9<sup>th</sup> RESPONDENT</b>
<b>ANDRE VERMEULEN</b>	<b>10<sup>th</sup> RESPONDENT</b>
<b>TERTIUS STEARS</b>	<b>11<sup>th</sup> RESPONDENT</b>
<b>FRANCO FERIS</b>	<b>12<sup>th</sup> RESPONDENT</b>
<b>QUINTON VAN ROOYEN</b>	<b>13<sup>th</sup> RESPONDENT</b>
<b>ANNETTE BRANDT</b>	<b>14<sup>th</sup> RESPONDENT</b>
<b>NANGULA KALULUMA</b>	<b>15<sup>th</sup> RESPONDENT</b>
<b>KOSMAS EGUMBO</b>	<b>16<sup>th</sup> RESPONDENT</b>

**Neutral Citation:** *Minister Of Finance v Hollard Insurance Company Of Namibia Limited*  
(HC-MD-CIV-MOT-GEN-2018/00227) [2018] NAHCMD 391 (29 November 2018)

**Coram:** MASUKU, J  
**Heard on:** 14 November 2018  
**Delivered on:** 29 November 2018

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### **ORDER**

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1. The application for leave to appeal the judgment of this court dated 20 September is hereby refused.
2. The applicants for leave are ordered to pay the costs of the application consequent upon the employment of instructing and instructed Counsel.

3. The matter is removed from the roll and is regarded as finalised.

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## REASONS

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### MASUKU J:

[1] On 20 September 2018, this court granted an order, pursuant to an application by the applicants as follows:

‘1. The application and implementation of the impugned provisions of the Namibia National Reinsurance Act No. 22 of 1998 (‘the Act) and Government Notices 333, 334, 336, 337 and 338, as promulgated on 29 December 2017 in terms of the Act in Government Gazette 6496 and the Regulations promulgated on 29 December 2017 in terms of the Act, and published in terms of the Act in Government Gazette No. 6496 be and are hereby stayed, pending the determination of the following cases presently pending before this Court, namely, HC-MD-ACT-CIV-OTH-2017/04493 and HC-MD-CIV-MOT-REV-2018/00127.

2. The Applicants are ordered to pay the costs of the application consequent upon the employment of one instructing and two instructed Counsel.

3. The offensive matter contained in the following paragraphs of the answering affidavit be and are hereby struck out as constituting scandalous, and/or vexatious matter, namely, paragraphs [71.2]; [74.2]; [254]; [288]; [339]; [340] and [345].

4. The respondents are jointly and severally ordered to pay the costs of the motion to strike out on the normal scale.

5. The matter is removed from the roll and is regarded as finalised.’

[2] Dissatisfied with paragraph 1 above in the order, in particular, the applicants in this matter lodged an application for leave to appeal. This application was heavily contested by the respondents.

[3] The applicants sought an order granting them leave to appeal on the grounds that: (a) the court had no power to grant the “stay” it granted; (b) the order was made both *mero motu* and without joining non-parties patently affected by it; (c) the order infringes the doctrine of separation of powers; (d) the collateral challenge granted by the court should have been rejected.

[4] The main issue to determine, is whether the order granted by the court, which is sought to be impugned by the applicants, is final in nature and effect and therefore amenable to being appealed to the Supreme Court with leave of this court.

[5] The applicants strongly contended that the order granted was final in nature and thus appealable, whereas the respondents argued the contrary.

[6] The court was referred to and relied on a Supreme Court judgment and a *locus classicus* judgment in our jurisdiction in so far as the appealability of court orders or judgments is concerned. The pertinent question the court had to answer, as foreshadowed above, was this: was the order it issued on 20 September 2018, final in nature and effect and thus appealable?

[7] Three attributes to determine whether a judgment or order is appealable were laid down by the Supreme Court in *Shetu Trading CC v Tender Board of Namibia*<sup>1</sup> The Supreme Court, in its decision, relied on other judgments in this jurisdiction and beyond.<sup>2</sup>

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<sup>1</sup> 2012 (1) NR 162 (SC).

<sup>2</sup> As was stated in the well-known cases of *Di Savino Antonio v Nedbank Namibia Limited* (SA 82/2014) [7 August 2017] SC Judgment and *Zweni v Minister of Law and Order* 1993 (1) SA 523 (A).

[8] The elements that must be shown to exist, in order to render a judgment or order appealable, as found in the case law referred to above are the following:

- 8.1. It must be final in effect and not susceptible to alteration by the Court of first instance;
- 8.2. It must be definitive of the rights of the parties; and
- 8.3. It must have the effect of disposing of at least a substantial portion of the relief claimed in the main proceedings.

Application of the attributes to the present matter:

[a] *It must be final in effect and not susceptible to alteration by the Court of first instance*

[9] The effect of the order granted on 20 September 2018 was not final in nature or effect. It merely ordered a stay of the application and implementation of the impugned provisions of the Namibia National Reinsurance Act No. 22 of 1998, the Government Notices 333, 334, 335, 336, 337 and 338, promulgated on 29 December 2017 in terms of the Act in Government Gazette 6496 and the Regulations promulgated on 29 December 2017 in terms of the Act, and published in terms of the Act and published in Government Gazette No. 6496 pending the determination of the following cases presently pending before this Court, namely, HC-MD-ACT-CIV-OTH-2017/04493 and HC-MD-CIV-MOT-REV-2018/00127 (main proceedings).

[10] The words 'The matter is removed from the roll and is regarded as finalised', occurring in the order was given purely in compliance with administrative and statistical requirements in order to indicate whether the matter had been brought to an end on the issues before court or there were other proceedings or steps outstanding yet to be completed. It does not purport to determine or indicate the nature and character of the

order for purposes of appealability. The order does not in any manner, shape or form, affect the main proceedings brought before court under the above mentioned cases.

*(b) It must be definitive of the rights of the parties*

[11] The court did not make any determination on the validity or otherwise of the impugned provisions. What the Court did strictly speaking was to suspend the enforcement of the provisions pending the determination of the impugned provisions in that the Court did not pronounce itself on the validity or otherwise of the impugned provisions.

[12] Furthermore, the mere fact that a decision or order issued may cause a party inconvenience or place it at a disadvantage in the litigation which nothing but an appeal can correct, is not taken into account in determining the question of the appealability of the order or judgment.<sup>3</sup>

*(c) It must have the effect of disposing of at least a substantial portion of the relief claimed in the main proceedings*

[13] As stated above the court did not pronounce itself on the validity or otherwise of the impugned provisions leaving same to be fully and finally determined by this court in the proceedings that are already pending before this court. The Order granted on 20 September 2018 thus did not have an effect on the main proceedings launched and pending before court and was therefore not final in form or effect.

[14] In essence, the order granted does not meet the requirements as set out in the *Shetu Trading* case and therefore is not appealable, if we are to consider the pending applications before this court to be the main proceedings. No relief sought in those applications are implicated in the judgment of this court dated 20 September 2018,

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<sup>3</sup> *Zweni v Minister of Law and Order* 1993 (1) SA 523 (A) par 9.

besides a stay of the provisions in question. For the reasons advanced above, the application for leave to appeal is refused with costs.

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TS Masuku  
Judge

## APPEARANCES:

APPLICANTS: J Gauntlett (with him L Kelly, U Hengari E Nekwaya  
instructed by Sisa Namandje & Co Inc. & Office of the Government  
Attorney, Windhoek

RESPONDENTS: R Töttemeyer (with him D Obbes, R Heathcote, R Maasdorp  
instructed by Francois Erasmus & Partners, Engling Stritter &  
Partners & Van der Merwe-Greef Andima Inc., Windhoek