

REPUBLIC OF NAMIBIA



HIGH COURT OF NAMIBIA, MAIN DIVISION, WINDHOEK

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

CASE NO. HC-MD-CIV-MOT-GEN-2017/00358

In the matter between:

**SAMUEL EICHAB**

**APPLICANT**

and

**COMMISSIONER GENERAL NAMIBIA**

**CORRECTIONAL SERVICES:**

**RAPHAEL HAMUNYELA**

**1<sup>ST</sup> TO 6<sup>TH</sup> RESPONDENTS**

**Neutral Citation:** *Eichab v Commissioner General Namibian Correctional Service: Raphael Hamunyela* (HC-MD-CIV-MOT-GEN-2017/00358) [2018] NAHCMD 401 (6 December 2018)

**Coram:** Masuku, J

**Heard on:** 18 September 2018

**Delivered on:** 6 December 2018

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**ORDER**

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1. The application by the applicant for the relief sought in the notice of motion is hereby dismissed.
2. There is no order as to costs.

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

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### REASONS FOR THE ORDER

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MASUKU J:

[1] The applicant is currently serving a sentence of 20 years for murder and robbery at the Windhoek Correctional Facility. He was sentenced on 19 March 2010.

[2] He subsequently brought an application to this court seeking the following relief:

'...Applicant humbly pray for the Honourable Court to condone my non-compliance of the rules of this court;

2. That the Honourable Court to order the Authorities at Evaristus Shikongo Correctional Facility to provide a range of rehabilitation programmes to address the needs of the applicant, and to engage the applicant in necessary work programmes that will promote and nurture the training and industrial skills of the applicant as per the provisions of Correctional Service Act no. 9 of 2012, sec. 94, 95 (1) (a);

3. That the Honourable Court to order the Authorities at Evaristus Shikongo Correctional Facility to comply with the internal memorandun dated 13 March 2017 from the Office of the Commissioner General and to consider the Applicant for punctual release on full parole after serving half of his sentence in accordance with the Prison Act No. 17 of 1998 Sec. 95(1)(a);

4. The Court to order that offenders who were sentenced for committing offences before the commencement of the Correctional Service Act 2012 i.e before 01 January 2014 and most of whom have already completed half of their sentences be considered for release on full parole hence be released accordingly within 30 days after such a court order because respondents unfairly failed to comply with their own Act, Prison Service Act No. 17 of 1998 (and the annexure marked B);

5. That the Honourable Court order the respondents not to harrass, threaten, or condemn the applicant or violate his fundamental rights for instituting his civil litigation.'

[3] At the time of applicant's sentencing, the Prisons Act, 17 of 1998 was still in force and it is on this basis that he contends that he should be considered for release on parole based on the provisions of the aforementioned Act.

[4] For purposes of this ruling, it is not necessary to deal with the provisions of the said Act in detail, let alone those of the Act that has since repealed the 1998 Act, *to wit*, the Correctional Services Act, 9 of 2012. I say this for the simple and clear reason that applicant has prematurely brought this application to court in that when regard is had to the provisions of both Acts, he is not yet eligible for consideration for release on parole. Having being sentenced in 2010, to date, applicant has only served a period of 8 years in prison, which neither amounts to half, nor a two thirds of his sentence.

[5] Section 95 of the 1998 Act, which the applicant relies on, provides that where an offender has served half of his sentence, he may be released on full parole, provided that he satisfies the institutional committee of the relevant correctional facility as to some other requirements relating to his conduct and discipline during the period of his sentence.

[6] Section 115 of the 2012 Act, on the other hand, provides for the release on full parole or probation of offenders serving imprisonment of 20 years or more for scheduled crimes of offences unless he or she has served two thirds of his or her term of imprisonment. In terms of the provisions of both Acts, applicant fails to meet the threshold for possible release on parole.

[7] It would seem that the applicant only brought this application to remind the correctional facility and or authorities that by the time he becomes eligible for parole, he should have been afforded the opportunity to have undergone

reintegration and rehabilitation programs. According to applicant he has not been afforded such an opportunity.

[8] The respondents, their part, however submitted that in terms of section 94 of the Correctional Services Act, the correctional service must provide a range of rehabilitation programmes designed to address the needs of offenders and contribute to their successful reintegration into society. They contend that applicant has been partaking in these programmes. It is therefore up to the correctional facility to ensure that it avails these programmes to offenders that may be eligible for release on parole.

[9] The court is of the considered view that it would not be necessary to make a pronouncement as to whether or not the repealed Act of 1998 or the current 2012 Act is applicable in the applicant's circumstances. This is owed to the prematurity of this application as discussed above.

[10] In the circumstances, there is only one conclusion in this matter, namely, that the application by the applicant is thus dismissed. There is no order as to costs.

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TS Masuku  
Judge

APPEARANCES

APPLICANTS: In person

RESPONDENTS: M Meyer  
of the Government Attorney, Windhoek