

“ANNEXURE 11”

IN THE HIGH COURT OF NAMIBIA

Case Title: Traupe Farming CC & Another // The President of the Valuation Court & 9 Others	Case No.: HC-MD-CIV-MOT-GEN-2017/00459
	Division of Court: High Court
Heard before: Honourable Mr Justice Angula, Deputy Judge-President	Date of hearing: 19 January 2018
	Delivered on: 21 February 2018
Neutral citation: <i>Traupe Farming CC & Another v The President of the Valuation Court</i> (HC-MD-CIV-MOT-GEN-2017/00459) [2018] NAHCMD 68 (21 February 2018)	
Result on merits: Merits not considered.	
The order: Having heard Mr Corbett SC (with him Ms de Jager), counsel for the applicants, and Mr Kanguuehi , counsel for the sixth respondent, and having read the documents filed of record: IT IS ORDERED THAT: 1. The applicants' non-compliance with the requirements related to forms, service and notices is condoned and the matter is heard as one of urgency. 2. Pending the final determination of the review application filed under case number HC-MD-CIV-MOT-REV-2017/00099, the sixth, ninth, and tenth respondents are interdicted and restrained from in any manner implementing: 2.1 The oral rulings and or orders of the first to fifth respondents handed down on 23 September 2016; 2.2 The written rulings and/or order of the first to fifth respondents handed down on 10 October 2016; 2.3 The written rulings and or orders handed down by the first, second, fourth and fifth respondents on 8 November 2016 referred to as 'Reasons for ruling why the court proceeded 18 October	

2016 and hearing evidence’;

- 2.4 The written rulings and/or orders, purportedly of the first to fifth respondents, dated 14 November 2016, but handed down on 23 November 2016;
 - 2.5 The proceedings of the Valuation Court in terms whereof such rulings and/or orders were handed down.
3. Interdicting and restraining:
- 3.1 The tenth respondent from issuing any assessment of land tax payable in terms of the Main Valuation Roll dated 1 April 2012, and purportedly certified in terms of sub-regulation 16(1), and purportedly subject to regulation 16(4) read with sub-regulation 21(1) and 21(2), forming the assessment of land tax in terms of the Land Valuation and Taxation Regulations: Agricultural (Commercial) Land Reform Act ,1995 (the Regulations) promulgated in terms of the Agricultural (Commercial) Land Reform Act , No 6 of 1995 (“the Act”); and
 - 3.2 The tenth respondent from requiring the any land tax payable in terms of any assessment purportedly issued by the tenth respondent in terms of Regulation 21 of the Regulations, read together with the Act, and based upon the Main Valuation Roll dated 1 April 2012, purportedly certified as aforesaid.
4. Orders 2 and 3 shall operate with immediate effect pending the final determination of the review application filed under case number HC-MD-CIV-MOT-REV-2017/00099.
 5. The sixth respondent is ordered to pay the applicants’ costs such costs to include the costs of one instructing counsel and two instructed counsel.
 6. The matter is removed from the roll and considered as finalised.

Reasons for orders:

1. Urgency

The court is satisfied that the applicants had sufficiently and explicitly set out facts at circumstances upon which they relied for the averment that the matter is urgent. Furthermore, the court took into consideration

the fact that there are commercial interests at stake concerning the dispute pending between the parties and that such interest's justified urgency. In addition, the court took into account that the attempt by the parties to settle the dispute through negotiation, as a relevant consideration and was of the view that the delay by applicants to bring the application was not self-created as contended on behalf of the sixth respondent.

As regard to the reasons why the applicants averred that they could not be afforded substantial redress at a hearing in due cause the court was not satisfied that the applicants would not be afforded redress in due course as the Regulations promulgated under the Agricultural (Commercial) Land Reform Act, No. 6 of 1995 make provision for refund in the event of overpayment of any amount paid but not owed to the Fiscus. However on the approach that the applicants' case is a good one and taking into consideration the alleged unlawful, irregularities and flawed Valuation Roll upon which taxation would be assessed, the court is of the view that it would be fair and reasonable to exercise its discretion in favour of the applicants with regard to this requirement. In the light of all these considerations and in the exercise of its inherent discretion the court concluded that the matter is urgent.

2. Prima facie case

The applicants raised three substantives grounds in support of their application to have the Valuation Court's rulings and/or orders reviewed and set aside. The first three grounds concerned the non-compliance with provisions of the Regulations promulgated under the Act. Further grounds were that the rulings of the Valuation Court were defective; and finally that the first, third fourth and fifth respondent failed to act fairly and reasonably in terms of the common law and Article 18 of the Constitution. In the court's considered view, the applicants, as land owners and consequently liable to pay land tax to be levied based on the alleged flawed and defective Valuation Roll, have a prima facie right to demand that the Valuation Roll is free of defects before they can be assessed for payment of land tax. Given all these considerations the court was persuaded that the applicant had discharged the onus on them and had established a prima facie case in the sense that if the facts alleged by the applicants were to remain un-contradicted and were to be believed at the hearing they would establish a prima facie case.

3. A reasonable apprehension of irreparable harm

On the basis of the principle that if the illegalities alleged by the applicants with respect to the Valuation Roll are proven, prejudice is presumed and therefore no proof of special damages is required. The court was reluctantly persuaded that the applicants' apprehension that they would be required to pay huge sum of land tax money for which they might in the end not be liable, that such apprehension was reasonable, under the

circumstances. The court took the view that the short time period within which the applicants would be required to pay the tax amount, based on an alleged defective Valuation Roll coupled with the time when the pending main review application would be heard, were relevant considerations. The court further took into consideration the fact that the applicants could be refunded by the Government in the event it is ultimately found that the money paid had not been due. However given the alleged illegalities and irregularities with respect to the Valuation Roll, the court was reluctant to allow the applicants to suffer any harm even for a short period under those circumstances.

4. Balance of convenience interdicting the first respondent from carrying further construction activities

In this connection it has already been indicated, that it is the court's considered view, based on the strong allegation of non-compliance with the provisions of the Regulations, the common law and Article 18 of the Constitution, that if those allegations were to be proved and believed at the hearing, the applicants have a strong prospect of success on the merits. It has been held that the stronger the prospects of success, the less important the balance of convenience. The court was of the view that this consideration applies to the present matter. The court was therefore satisfied that the balance of convenience favour the applicants.

5. No alternative remedy

This aspect has already been considered when issue of irreparable harm was considered; that the applicants would be unable to obtain substantial redress at a hearing in due course. If the applicant are not granted interim relief they would be required to pay tax which is not due and which it based on a defective Valuation Roll. The applicant should not be required to part with their money just because they will be able to claim refund. The court was not persuaded that the applicants have alternative remedy.

6. Costs

The court was of the view that the normal rule that costs follows the results should apply accordingly, the court orders that the sixth respondent should pay the applicants' costs, such costs to include the costs of one instructing and two instructed counsel.

Judge's signature:	Note to the parties:

Counsel:	
Applicants	Sixth Respondent
<p>Corbett SC (with him B de Jager) Engling, Stritter & Partners, Windhoek</p>	<p>K Kangueehi Kangueehi & Kavendjii Legal Practitioners, Windhoek</p>