

REPUBLIC OF NAMIBIA

HIGH COURT OF  
WINDHOEK



NAMIBIA, MAIN DIVISION,

JUDGMENT

CASE NO: HC-MD-CIV-APP-ATL-2018/00002

In the matter between:

JOSEPHINA KAMATI (BORN ABNER)

APPELLANT

and

THE CHAIRPERSON OF THE VETERANS BOARD

RESPONDENT

**Neutral Citation:** *Josephina Kamati (Abner) v The Chairperson Of The Veterans Board* (HC-MD-CIV-APP-ATL-2018/00002) [2019] NAHCMD 70 (6 March 2018)

**CORAM:** CLAASEN, AJ

**Heard:** 25 January 2019

**Delivered:** 06 March 2019

**Reasons Released:** 29 March 2019

**Flynote:** Veterans Act – Registration as a veteran – Requirements of section 27(2) (b) – Appeal from Veteran’s Board - Court upholding decision by the Veterans Appeal Board – Court finding that the appeal record pointed to the fact that appellant did not provide evidence that she consistently and persistently participated or engaged in any

political, diplomatic or under-ground activity in furtherance of the liberation struggle up to the date of independence as required by section 27(2)(b) – Consequently, the Veterans Appeal Board's decision not to register the appellant as a veteran in terms of section 27 was not wrong.

**Summary:** Veterans Act – Registration as a veteran – Requirements of section 27(2)(b) – Appeal from Veterans Appeal Board - The appellant, Mrs Kamati, filed an appeal against the decision of the Veterans Appeal Board not to register her as a veteran in terms of the Veterans Act 2 of 2008. - The court was tasked to consider the grounds of appeal to determine whether appellant has satisfied the court that good grounds exist to uphold the appeal. – It was further the task of this court to determine whether the Veterans Appeal Board applied the requirements section 27(2)(b) correctly.

*Held* – The appellant failed to satisfy court that she consistently and persistently participated or engaged in any political, diplomatic or under-ground activity in furtherance of the liberation struggle up to the date of independence.

*Held further* - The decision of the appeal board was in accordance with the requirements of section 27(2)(b).

---

ORDER

---

1. The appeal is hereby dismissed.
  2. The matter is removed from the roll and regarded as finalised.
- 

JUDGMENT

---

CLAASEN A J:

### Introduction 3

[1] The appellant in this matter appealed against the decision of the Veterans Appeal Board. The citation of the respondent refers to the Chairperson of the Veterans Board. The citation is a simple grammatical error and the citation of the respondent should have been the Chairperson of the Veterans Appeal Board.

[2] This matter brings to mind the words of Reverend Martin Luther King 'freedom is never voluntarily given by the oppressor; it must be demanded by the oppressed.' Many Namibians citizens have served in the arduous passage to freedom from South African reign. Their contribution was not in vain, as on 21 March 1990, Namibia gained its independence as a sovereign state.

[3] Eighteen years after Namibia's independence the government enacted the Veterans Act, 2008<sup>1</sup> to attend to the plight of the veterans of the liberation struggle. The objects of the Act are to provide for mechanisms to register persons as veterans, to establish a fund to benefit veterans, to initiate projects to assist veterans and for matters incidental thereto.

[4] Mrs Kamati, born Abner (I will in this judgment refer to her as Mrs Kamati) a senior citizen who hails from the Uukwambi district in northern Namibia and who now resides in Windhoek, exercised her rights under the Veterans Act and applied for registration as a veteran. In a notice dated 11 April 2014, the Veterans Board informed her that the application was rejected. The reason that was given was that she does not meet the qualifying criteria.

[5] Aggrieved by the refusal, she filed a notice of appeal to the Veterans Appeal Board on 12 May 2014. The Veterans Appeal Board heard her appeal during February 2017 and made their decision known by 16 June 2017. The conclusion of the Veterans Appeal Board was that it concurred with the decision of the Veterans Board. Still

---

<sup>1</sup> Veterans Act (Act No.2 of 2008)

aggrieved by the Veterans Appeal Board's decision Mrs Kamati approached the High Court to appeal against the decision of the Veterans Appeal Board, as she is entitled to by virtue of s 43 of the Act.

#### Basis of appeal

[6] In her notice of appeal filed on 06 November 2017 Mrs Kamati grounds her appeal on the following: She alleges that the presiding officer of the Veterans Appeal Board erred:

- (a) In finding that because she was acting on the instructions of her parents to further the liberation struggle, she is not a veteran;
- (b) In finding that because she did not have a house of her own she cannot be recognised as a veteran;
- (c) In finding that she was only 18 years at the time of the involvement of the furtherance of the liberation struggle and she was therefore not a veteran; and
- (d) In law in failing to apply the requirements of s 27(2)(b) of the Act and considered matters not prescribed by law.

#### Issues before the court

[7] From the grounds of appeal in the notice of appeal I am of the view that the issues which I am called upon to resolve are:

- (a) Whether the Veterans Appeal Board took into account irrelevant factual considerations?
- (b) Whether the appellant's evidence meet the requirements to qualify as a veteran in terms of s 27(2)(b) of the Act?

[8] The consideration of the issues will require me to briefly set out the evidence led at the hearing of the appeal. I now turn to the evidence.

## Evidence

[9] Mrs Kamati's testimony took place on 2 days. On the first date of 14 February 2017 she testified that her father was involved in the liberation war and when he was at home she used to cook for the PLAN<sup>2</sup> fighters who came to their house. She attested of an incident in 1977 wherein she was arrested by SWATF<sup>3</sup> members and taken to Oshakati. She was interrogated and her leg was burned for her refusal to give up the location of the PLAN fighters.<sup>4</sup> After a few days she was released and returned to her parent's home in Onenongo.

[10] She further testified that between the years of 1982 and 1983, she moved to Windhoek, where she met her husband and they attended SWAPO meetings at a certain Mr Namalambo's house who was described as an organiser of SWAPO meetings. Thereafter the hearing was adjourned.

[11] Upon resumption of the hearing on 24 February 2017, Mrs Kamati narrated an incident that occurred in 1975 where three PLAN combatants came to their house and her mother offered them a place to sleep and food. One of the combatants had an injury and the appellant treated it with salt and water. The combatants stayed for about a week and left.<sup>5</sup> When prompted for another activity Mrs Kamati referred to the incident wherein she was taken to Oshakati prison for interrogation, but this time around, she recollected it to have been during 1976. She continued her evidence that she came to Windhoek in 1977. In response to a question by the chairperson whether it was indeed that year in which she came to Windhoek, she first answered in the positive but retracted it and indicated that it was during 1980 that she came to Windhoek.

[12] A sibling of the appellant, Liven Rufusa gave testimony in support of the appellant's case. Nothing turns on the evidence of this witness, as towards the end of

---

<sup>2</sup> PLAN – The People's Liberation Army of Namibia which was the military wing of SWAPO.

<sup>3</sup> SWATF – South West Africa Territorial Force which was an extension of the South African defense force.

<sup>4</sup> Page 23 of amended record.

<sup>5</sup> Page 26-27 of amended record.

the session she stated that her testimony was based on what she was told by her mother and the appellant.

[13] With this brief but crux of Mrs Kamati's evidence I now proceed to consider whether the Chairperson of the Veterans Appeal Board erred as alleged by Mrs Kamati.

#### Evaluation of the matter

[14] The findings of the Veterans Appeal Board are captured in the following extract:

- 'i) It is doubtful whether the appellant's claim is correct because it was never confirmed by any witness. In addition, she admitted that she had no house of her own and surely if she did cook for PLAN combatants, was under the instruction of her parents.
- ii) Her claim of attending meetings at Mr. Namalambo's house in Windhoek was also not confirmed. Hence, the Appeal Board is doubtful whether her story is correct.
- iii) The Appeal Board, therefore concurs with the Veterans' Board decision.
- iv) Order: Appeal not successful. '

[15] Counsel for the appellant, Mr Ntinda argued that the Veterans Appeal Board considered factors that were not prescribed by law. He further submitted that based on the evidence the appellant indeed met the requirements of s 27(2)(b) of the Act.

[16] Mr Hamunyela, on behalf of the respondent contended that there was no evidence on record that the appellant consistently and persistently participated in the liberation struggle up to the date of independence and that it was permissible for the Veterans Appeal Board to have, on a balance of probabilities, doubted the correctness and/or truthfulness of the appellant's uncorroborated and contradictory evidence.

[17] The critical question is thus whether the Veterans Appeal Board or the Appeal Board could have taken into account the factors referred to in para 6 when it considered Mrs Kamati's application.

[18] The record of proceedings that was placed before me included the proceedings that were before the Veterans Board. It is apparent that the Veterans Board rejected her appeal because she does not meet the qualifying criteria. The Veterans Appeal Board confirmed that finding. Apart from that they also found that she did not have a house of her own, acted under parental instruction and her claim of attending SWAPO meetings is not corroborated.

[19] The Act in s 42(1)<sup>6</sup> permits the Veterans Appeal Board to have regard to, inter alia the circumstances which were considered in taking the decision of the act appealed against as well as other information at the disposal of the Appeal Board. It therefore, appears that the Veterans Appeal Board could legitimately take into account those factors.

[20] The next question is whether the evidence submitted by the applicant satisfies the provisions of the law.

[21] In order to answer this question, it is crucial to start with the definition of a veteran. S 27(2) of the Act provides that a veteran is a person who:

- (a) was a member of the liberation forces, provided the person was above 18 years of age on 21 March 1990;
- (b) Consistently and persistently participated or engaged in any political, diplomatic or under-ground activity in furtherance of the liberation struggle up to the date of independence; or
- (c) Owing to his or her participation in the liberation struggle was convicted, whether in Namibia or elsewhere, of any offense closely connected to the struggle and sentenced to imprisonment, provided the person continued with the liberation struggle activities after being released.

---

<sup>6</sup> Section 42 (1) The Appeal Board hearing an appeal in terms of this section – (a ) must deal with the appeal with due regard to - (i) the circumstances which were considered in taking the decision or performance of the act appealed against; (ii) the grounds of appeal; (iii) the documentary or oral evidence submitted or given by the person at the request or with the permission of the Appeal Board; and (iv) any other information at the disposal of the appeal board; (b) may confirm, vary or set aside the decision or act to which the appeal relates.

[22] Although s 27(2)(b) has to be read with subsection (3), it is not necessary to probe into the said subsection for purposes of this matter.

[23] In interpreting what the section entails, it is inexorable that an applicant must have participated or engaged in activities of the liberation struggle. The Act defines 'liberation struggle' as the political, diplomatic, military or underground struggle waged against colonialism, racism and apartheid which struggle was waged in Namibia and other countries and resulted in the attainment of the independence of Namibia of 21 March 1990.<sup>7</sup>

[24] The question arises as to the meaning of the words consistently and persistently that are used in section 27(2)(b) of the Act to describe the extent of engagement or participation in the liberation struggle. According to the Concise Oxford English Dictionary the word "consistent" means "acting or done in the same way over time..."<sup>8</sup> In harmony with that is the meaning ascribed to the word "persistent" as "lasting for a long time..."<sup>9</sup> in the Cambridge Advanced Learners Dictionary. In addition, the Legislature included a phrase 'up until the date of independence' to further qualify an applicant's participation and engagement in activities in the furtherance of the liberation struggle.

[25] From the aforementioned it follows that the level of participation that the Legislature contemplated in terms of s 27(2)(b) of the Act is that of perpetual nature until the date of independence.

[26] On the application of the requirements to the facts, the question is whether Mrs Kamati's participation was sufficient to satisfy the requirement of continuous participation. Although, the appellant's evidence contains incidents of engagement, it did not persist until the year that Namibia attained independence. Her testimony referred to relevant activities that occurred in certain years such as 1975, 1976, 1977 but it leaves a gap in respect of the remaining years until 1990. There is no ambiguity as

---

<sup>7</sup> Section 1 of Act 2 of 2008.

<sup>8</sup> Stevenson & Waite *Concise Oxford English Dictionary* 12<sup>th</sup> ed, Oxford University Press. (2011).

<sup>9</sup> C Mc Intosh *Cambridge Advanced Learners Dictionary* 4<sup>th</sup> ed, Cambridge University Press. (2013).



to the meaning of up until independence and her evidence does not sustain a finding favourable in this respect.

### Conclusion

[27] Based on the evidence on the record, I find that the evidence submitted by Mrs Kamati is not sufficient for her to qualify as a veteran in terms of the criteria of s 27(2)(b) of the Act. In the result, the ruling of the Veterans Appeal Board is confirmed and the appeal is dismissed.

[28] In accordance with regulation 24,<sup>10</sup> there is no order as to cost.

### ORDER

1. The appeal is hereby dismissed.
2. The matter is removed from the roll and regarded as finalised.

---

**C CLAASEN**  
**ACTING JUDGE**

### APPEARANCES:

APPLICANT:

M Ntinda

of Sisa Namandje & Co Inc, Windhoek

---

<sup>10</sup> Regulations relating to the Appeals of the Veterans Appeal Board and the High Court: Veterans Act, 2008, No 45 of 2011.

RESPONDENT: H Hamunyela  
of Government Attorneys, Windhoek