

REPUBLIC OF NAMIBIA

HIGH COURT OF  
WINDHOEK

JUDGMENT

CASE NO: HC-MD-CIV-



NAMIBIA, MAIN DIVISION,

MOT-GEN-2019/00441

In the matter between:

**JOSEPH KAFURO KUDUMO**

**APPLICANT**

and

**INSPECTOR-GENERAL OF THE NAMIBIAN POLICE**      **1<sup>ST</sup> RESPONDENT**

**THE MINISTER OF SAEFETY AND SECURITY**      **2<sup>ND</sup> RESPONDENT**

**THE EXECUTIVE DIRECTOR FOR THE OFFICE OF  
THE PRESIDENT**      **3<sup>RD</sup> RESPONDENT**

**Neutral Citation:** *Kudumo v Inspector-General of the Namibian Police* (HC-MD-CIV-MOT-GEN-2019/00441) [2020] NAHCMD 451 (1 October 2020).

**CORAM:**      **MASUKU J**

**Heard:**      8 September 2020

**Delivered:**      **1 October 2020**

**Summary:** Administrative Law – *mandamus* – compelling the Inspector-General of the Namibian Police Force to stop investigations into allegations of impropriety against the applicant – Legislation – statutory notice – s 39(1) of the Police Act, 1990 – objects thereof – Civil Procedure – joinder of parties – Law of Evidence – production of confidential information in proceedings – Legal Ethics – sanctions for non-compliance with orders of court and non-appearance of legal practitioners.

**Summary:** The applicant, a police officer attached to the Office of the President, approached this court seeing an order stopping investigations into

allegations that he had been involved in corruption and abuse of Government amenities. He applied for the order on the basis that the investigations had been pending for a long time. The application was opposed by the respondents chiefly on points of law *in limine*, including non-joinder; no statutory notice issued in terms of the Police Act and that the report on which the application was based, was confidential and should not have been disclosed in court proceedings.

Held: that the non-joinder of the Prosecutor-General and the Anti-Corruption Commission was unnecessary as they did not have a direct and substantial interest in the matter.

Held that: the applicant had complied with the spirit of s 39 of the Police Act in that he had written a letter to the 1<sup>st</sup> respondent and although he answered the allegations of misconduct against him, he did intimate that he was minded to bring legal proceedings. As such, the main purpose of the statutory notice, which is to notify the State organs of possible legal proceedings and to afford them time to investigate and consider the issues, was met.

Held further that: the report on which the application is predicated, namely, the report by the 1<sup>st</sup> respondent, is not confidential and therefore not liable to disclosure in the proceedings because it was disclosed by the office of the 3<sup>rd</sup> respondent and the applicant was requested to answer to the allegations therein and did so, His contention in that regard, was not contested by the respondents.

Held that: it would be improper for the court to issue an order stopping the investigations as that might result in judicial overreach on matters falling within the purview of the organs of State. Furthermore, that it would be unsightly for the court to be seen to order the stopping of investigations into serious allegations as the courts may be perceived to be shielding individuals from accountability.

Held: that the respondents' legal practitioners must file a sanctions affidavit, explaining their non-compliance with court orders and non-appearance on the date of hearing and that the affidavit and judgment must be served by them on the respondents.

The court granted an order for the Inspector-General to complete the investigations within a period of 30 days and to inform the applicant of the outcome thereof. The 1<sup>st</sup> and 3<sup>rd</sup> respondents were ordered to pay the costs of the application.

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### **ORDER**

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1. The First Respondent is hereby directed to conclude and disclose the findings of the investigation into the allegations of corrupt activities by the Applicant as contained in a report dated 16 January 2019, entitled, 'ALLEGED CORRUPT PRACTICES AND MISUSE OF A GOVERNMENT VEHICLE ALLOCATED TO STATE HOUSE, WINDHOEK, KHOMAS REGION' within thirty (30) days from the date of this order.
  2. The First and Third Respondents are ordered to pay the costs of this application jointly and severally, the one paying and the other being absolved.
  3. The Respondents' legal practitioners are ordered to explain on oath their non-compliance with the court order dated 28 May 2020 and their failure to appear in court on 9 September 2020 for the hearing.
  4. The Respondents' legal practitioners are ordered to serve a copy of the sanctions' affidavit, required in paragraph 3 above, together with this judgment, on their respective clients and to furnish proof of service thereof to the Court.
  5. The matter is postponed to 29 October 2020 at 08:30 for a sanctions hearing which the Applicant is excused from attending.
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## JUDGMENT

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### MASUKU J:

#### Introduction and background

[1] This is a rather unusual matter and in which unusual relief is also sought. The applicant is a member of the Namibian Police Force and is stationed at State House. As part of his duties, he was allocated certain Government amenities, if I may call them that, namely, a motor vehicle and a credit card. These were, it would seem allocated to the applicant for official use.

[2] It would appear that in the course of time, the rumour mill within the police circles generated allegations adverse to the applicant. It was alleged that he had abused or corruptly used the two amenities placed at his disposal. This culminated in a confidential report under the hand of the 1<sup>st</sup> respondent, the Inspector-General of the Namibian police.

[3] This report, dated 19 January 2019, was sent by the 1<sup>st</sup> respondent to the 3<sup>rd</sup> respondent, then Permanent Secretary to the Office of the President. In the said report, which is attached to the applicant's papers, the 1<sup>st</sup> respondent discloses information imparted to him regarding the alleged abuse of a Government vehicle, a Toyota Land cruiser single pick up by the applicant and the abuse of a Government credit card. The latter, it was alleged, he used to purchase personal items and would go on 'private shopping sprees, purchasing foodstuff, clothing and paying for his accommodation' when he travels with the Head of State.

[4] The Inspector-General under an item headed 'Comments' in the said report, recommended that the credit card allocated to the applicant be subjected to a thorough audit 'to determine the degree of misuse and prevent further gross abuse of Government credit card.' He further opined that it would

be in order to sensitise the issuers of Government vehicle trip authorities to issue monthly authorities to the applicant and stop issuing two-month travel authorities. He finally recommended that an investigation be initiated 'to confirm or refute the allegation levelled' against the applicant.

[5] The report did come to the applicant's notice and he wrote a letter to the 3<sup>rd</sup> respondent dated 28 January 2019. In it, the applicant, through his legal practitioners of record, expressed his deep-seated grievance with the allegations contained in the confidential report. He proceeded to deny the allegations made against him and responded individually and in detail to all the issues and allegations the 1<sup>st</sup> respondent had alluded to as stated above. He noted in the said response that this was not the first time that such malicious allegations had been levelled against him.

[6] On 3 June 2019, the applicant's legal practitioners received a missive from the 3<sup>rd</sup> respondent advising that his office is busy conducting its own investigations into the matter. The 3<sup>rd</sup> respondent advised the applicant to direct any enquiries to the 1<sup>st</sup> respondent for a formal response. By letter dated 15 July 2019, the applicant, through his legal practitioners, wrote a letter to the 1<sup>st</sup> respondent requesting him to advise of the outcome of the investigations. No response has been received, it would seem from the 1<sup>st</sup> respondent.

[7] The applicant cries foul that for a period in the excess of 10 months, at the time he launched these proceedings, he had these allegations hanging over his head like the sword of Damocles, so to speak. It is his case that with allegations of corruption and abuse of Government property remaining unresolved, his chances of promotion and being honoured for his service, remain a distant pipe dream. It is the applicant's further case that allegations of corruption are, by their very nature serious and understandably serve to taint the reputation of the person alleged to be involved in or guilty of such unlawful activities.

[8] It is also his case that because of the close proximity that he has to the Head of State as part of his duties, it would be in the best interest of everyone for the matter to be concluded and laid to rest once and for all and at the earliest opportunity. Last, he stated that in view of the serious allegations against him, which are false and malicious, his life has been placed on pause whilst investigations with no end in sight are alleged to be in progress. He therefor seeks the order stated below.

[9] I should perhaps, for purposes of completeness, mention that the 2<sup>nd</sup> respondent, the Minister of Safety and Security, although cited and served with the papers, did not file any papers and did not participate in the proceedings. The only live respondents, for purposes of the proceedings, are the Inspector-General and the 3<sup>rd</sup> respondent, who shall be referred to as the 1<sup>st</sup> respondent and 3<sup>rd</sup> respondent, respectively.

#### Relief sought

[10] In his notice of motion, the applicant, based on the allegations recounted above, prayed for an order in the following terms:

‘(a) Directing that the First Respondent forthwith cease with an investigation into the Applicant in relation to a report dated on or about 16 January 2019 titled ‘ALLEGED CORRUPT PRACTICES AND MISUSE OF A GOVERNMENT VEHICLE TO STATE HOUSE, WINDHOEK, KHOMAS REGION’

(b) Alternative to paragraph (a) above, an order directing that the First Respondent conclude and disclose the findings of the investigation into the Applicant in relation to a report dated on or about 16 January 2019 titled, ‘ALLEGED CORRUPT PRACTICES AND MISUSE OF A GOVERNMENT VEHICLE ALLOCATED TO STATE HOUSE, WINDHOEK, KHOMAS REGION within fourteen days of this order or such reasonably expedient time frame as the Honourable Court may deem appropriate.

(c) Directing that the costs be awarded against the First Respondent and any/all such respondents (intervening parties) that may elect to oppose this application.

(d) Further and/alternative relief.’

### Non-appearance

[11] It is worth recording that on the date to which the matter had been postponed for hearing, the respondent's legal practitioners, played truant. On 28 May 2020, the case was set for hearing on 8 September 2020 and in the presence of the respondents' legal practitioner. There is no explanation from the latter as to why there was no appearance in court on the date of hearing.

[12] That is not the only misdemeanour. The respondents' legal practitioners were on the same date, i.e. 28 May 2020, ordered to file their heads of argument ten days before the date of hearing. This they also did not do and there is no explanation for this unbecoming behaviour on their part. As a result, on the hearing date, there was no appearance and no assistance thus given to the court regarding the argument on the respondents' behalf.

[13] I am of the view that the respondents have a right to demand an explanation from their legal representatives as to why they were not represented in court. For my part, I will demand an explanation not only for the non-appearance, but also for the non-compliance with the court order, something the court views in a serious light. The whole judicial edifice relies for its strength and sustenance on the obedience to court orders by all and sundry, legal practitioners, in both public service and private practice, included.

[14] In the light of the non-appearance of the respondent's legal practitioners, Mr. Mhata, for the applicant, moved the court to proceed in terms of rule 68(b), which regulates the procedure to be followed by the court in the event a respondent does not appear in court on the date of hearing.

[15] The said provision reads as follows:

'If on the date of set down for the hearing of an application the –  
(b) respondent does not appear, the court may grant the relief against the respondent if the circumstances justify granting such relief, with an appropriate order as to costs

and may proceed to hear the application as between the applicant and such of the respondents as are present and wish to oppose the relief sought.'

[16] My understanding of the said provision is that if the respondent does not appear, the court may then grant the relief sought if the court is satisfied that the relief in question is justified. In this regard, it would appear that the court is not at large, simply because the respondent is not in attendance, to the grant the relief sought by the applicant willy-nilly. The applicant should convince the court as to the propriety of the granting of the relief prayed for or some other relief that the court may deem appropriate.

[17] In this regard, Mr. Mhata proceeded to address the court on the matter, including the issues raised by the respondents in their papers. He did this out of the abundance of caution. In this regard, he addressed the court on all the matters raised on the respondents' behalf, including the issues raised by them *in limine*. In the following parts of the judgment, I proceed to deal with the issues and the determination thereof by this court.

#### The respondents' case on paper

[18] The 1<sup>st</sup> and the 3<sup>rd</sup> respondents filed answering affidavits in this matter. I will first deal with that of the 1<sup>st</sup> respondent. The 1<sup>st</sup> respondent raised points of law *in limine*, namely that the impermissible production and disclosure of the report; the non-joinder of the Prosecutor-General and the Anti-Corruption Commission; the prematurity of the application; the non-reviewability of the decision and the failure to issue a statutory notice by the applicant. There was nothing stated by the 1<sup>st</sup> respondent of any consequence in so far as the merits of the application and the allegations by the applicant in his founding affidavit, are concerned.

[19] For her part, the 3<sup>rd</sup> respondent filed an affidavit, raised some preliminary issues of law hinging, it would seem, on the 3<sup>rd</sup> respondent's power to carry out internal investigations in terms of the State Finance Act,



1991. Chiefly, and most importantly, the 3<sup>rd</sup> respondent states the following regarding the investigation into the applicant's use of the credit card:<sup>1</sup>

'The internal investigation as mandated by the Treasury Instructions BB0101 for the internal investigation regarding the usage of the credit card of Mr. Joseph Kafuro Kudumo (the "Applicant") was completed on 30<sup>th</sup> January 2019 after the receipt of expenditure report and receipts which were provided by him. The investigation concluded that all the spending he made was in accordance to the procedure. Therefore, there was no indication of misuse of credit card from Mr. Kudumo as alleged in the letter from the Inspector-General's Office in paragraph four (4).

[20] The first thing to note is that the 3<sup>rd</sup> respondent states in emphatic terms that the investigations were concluded and no wrongdoing was established against the applicant. It is most disconcerting, in the circumstances, that the applicant should, after the finalisation of this part of the investigation, continue to have his name to remain tarred with allegations of corruption and abuse of State property on an on-going basis without an end.

[21] I view this issue in a very serious light. It was incumbent upon the 1<sup>st</sup> respondent, as the initiator of the investigations, to have advised the applicant that he had been cleared as early as 30 January 2019. In this regard, I have no reason to doubt that the findings on this part of the investigations were not brought to the 1<sup>st</sup> respondent's attention, as the initiator. He appears to have done nothing whatsoever, about this, especially to inform the applicant of the outcome thereof. Viewed in the context of the matrix of the facts, especially the serious nature and gravity of the allegations against the applicant, this was grossly unfair, irresponsible and insensitive on the part of the 1<sup>st</sup> respondent.

[22] The 3<sup>rd</sup> respondent, for her part, raised the same points of law, *in limine*, as raised by the 3<sup>rd</sup> respondent. There is not anything of substance

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<sup>1</sup> Para 12 of the 3<sup>rd</sup> respondent's answering affidavit.

raised by the 3<sup>rd</sup> respondent either that can be said to join issue with the applicant's version on the merits. Both respondents had two common themes in this regard, namely, either noting the contents of the applicant's allegations, or denial of the allegations by the applicant and putting him to 'the strictest proof thereof', without placing any version before court. These accordingly constitute bare denials and nothing more.

[23] I now intend to proceed to deal with the preliminary points of law raised by the respondents in turn, as they are common to both the 1<sup>st</sup> and 3<sup>rd</sup> respondent.

#### *Statutory notice*

[24] The first point of law taken by the respondents is the alleged absence of a statutory notice required by s 39(1) of the Police Act,<sup>2</sup> (the 'Act'). In this regard, the respondents, citing the case of *Elia v Minister of Safety and Security*<sup>3</sup> submit that the notice is necessary to afford the State sufficient warning regarding the contemplated action and to enable it to ascertain the relevant facts and to consider them. This principle is trite.

[25] The applicant, in his replying affidavit, denies that he did not comply with the provision relating to statutory notice. He, in particular, refers to annexure 'JK3', to his founding affidavit, which was addressed to the 1<sup>st</sup> respondent by the applicant's legal practitioners. I am in unqualified agreement with the applicant that this letter, although serving other purposes, such as responding to the allegations contained in the report, does inform the 1<sup>st</sup> respondent that the applicant intends to take legal action against the 1<sup>st</sup> respondent.

[26] It is not my understanding that for a letter to qualify as a notice in terms of the said provision, it should quote the exact provisions of the Act and threaten to institute proceedings within a specified period of time. As long as

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<sup>2</sup> Act No. 19 of 1990.

<sup>3</sup> HC-MD-CIV-MOT-GEN- [2019] NAHCMD 21.

an intimation to bring proceedings is made, and which serves as notice of the writer's grievance has been given, I am of the considered view that the imperatives of the provision would have been met in that the recipient would have been alerted to the nature of the complaint and the possible legal proceedings intimated. To elevate the wording of the letter to some specified incantation, is not in my view necessary or justified.

[27] As indicated above, the applicant's letter in question conveyed his serious complaints, asking the 1<sup>st</sup> respondent to address his grievances, and to write a formal response to the said complaints. Failing that, the applicant stated that he would consider taking legal steps to redress the injustice he perceived. That is, in my view sufficient. It is, however, necessary to mention that the 1<sup>st</sup> respondent never responded to that letter. It would have been a fastidious approach to have expected the applicant to have written another letter in the circumstances. His letter served to kill a few birds with one stone and that is perfectly permissible. There is accordingly no substance to this point of law. It is dismissed.

#### *Non-joinder*

[28] The next point raised was that of the non-joinder of both the Prosecutor-General and the Anti-Corruption Commission as parties. I should cut this matter to the chase and state firmly this early, that this argument is spurious and lacks merits. There is no indication at all that either of the two constitutional offices have a direct and substantial interest in the relief sought by the applicant. This is a matter between an employer and an employee. It would only be if some semblance of evidence is gathered that the matter would be escalated and referred to either or both of these offices. This point is wholly devoid of merit and is accordingly dismissed.

#### *No prejudice to the applicant*

[29] This is another fatally flawed argument raised by the respondents. It is very disingenuous of the respondents to allege, in the answering affidavits as

they do, that there is no prejudice to the applicant that would require the intervention of this court. The main issue to reiterate, is that the applicant deposed to an affidavit, setting out the prejudice he is suffering. As indicated above, the respondents did not engage with the prejudice alleged, blow-by-blow. They placed no facts controverting the applicant's position.

[30] To recap, the applicant stated that the investigation had been going on for more than 10 months at the time of deposing to the founding affidavit. He stated that as long as the investigation remained uncompleted, he had a dark cloud of suspicion surrounding him, carrying in it unsavoury allegations of corruption and abuse of Government property.

[31] This, he stated, without demur, will affect his chances of progression and promotion within the Force and would imperil if not extinguish any chances of him receiving any recognition and honours for his service, regardless of how excellent it may be. This is not engaged at all by the respondents. The prejudice to the applicant is manifest and the allegation to the contrary is not seriously and genuinely made. This point of law is unmeritorious also deserving of the same fate as the others.

*'Confidential' information disclosed*

[32] In this connection, the respondents question the propriety of the applicant relying on alleged confidential correspondence between the 1<sup>st</sup> and 3<sup>rd</sup> respondents for the relief sought. The 1<sup>st</sup> respondent's official stated on oath that the said documents are 'confidential from disclosure and that any authorised public official could claim such confidentiality. . . Further, the possession of the document by the Applicant was not only a *prima facie* a (*sic*) contravention of the common law rule of confidentiality but also prejudicial to the administration of justice and public interest.'

[33] Before dealing with the correctness of these serious allegations, it is important to mention that the rules of common law referred to and the interests of the administration of justice and public interest alleged are not

identified at all for both the applicant and the court to meaningfully engage them. To make an already bad situation worse, the heads of argument were not filed by the respondents in which these rules and interests violated, would have been expected to be identified.

[34] The applicant's version is that the documents referred to are not privileged. He states that he was approached by a Mr. Etienne Maritz, then an employee at the Office of the Executive Director of the Office of the President and presented him with the documents in issue. His response thereto was required and which he states he gave. The respondents did not seek leave to deal with these allegations in the applicant's replying affidavit and in my considered view, they stand uncontroverted as they are.

[35] It is in my view clear that the respondents or their colleagues are the ones who gave the document in question to the applicant and required his response thereto. In any event, I am of the considered view that it was only proper for the applicant to have been given the documents in question in order to enable him to know the allegations appertaining to him and to respond thereto. This is the whole essence of the *audi alteram* principle, meaning, let the other side be heard. The issue of privilege in this case is incorrectly raised regard had to the facts attendant to the matter. It is also dismissed as lacking any semblance of merit.

### Relief

[36] The only question, in my considered view that the court has to consider soberly, is whether the applicant is entitled to be granted his main prayer, namely, an order for the 1<sup>st</sup> respondent to forthwith cease the investigation into the applicant's alleged wrongful conduct.

[37] It must be mentioned that this question must be approached from the common cause position that there is no doubt that the applicant is at the wrong end of an injustice in this regard. The investigation continues to hang precariously over his head as the sword of Damocles for a period well in the

excess of 15 months. It is most unjust and unfair for the applicant to dwell in this cloud of uncertainty regarding his future, considering the serious nature of the allegations in particular.

[38] I should add in this regard that it boggles the mind as to why the applicant should remain in this precarious position at least in respect of the issue of the credit card. I say this in view of the contents of the affidavit of the 3<sup>rd</sup> respondent, which state clearly and unambiguously that the applicant was cleared of any wrongdoing.

[39] Notwithstanding the precarious nature of the applicant's position and how much unjust it may be, the question is whether stopping the investigations is the proper relief in this case. Mr. Mhata referred the court to the powers of the 1<sup>st</sup> respondent set out in s 3(1) of the Act. These include the making of rules for the promotion of efficiency and discipline of members of the Force.

[40] Mr. Mhata contended and very strongly too that the facts in this case reveal a gross abuse of powers by the 1<sup>st</sup> respondent and an unacceptable level of arbitrariness on his part. He has, contended Mr. Mhata, exercised his powers of discipline in this matter, in a manner that has unduly affected the applicant's serenity of mind and his right to dignity. Fairness, would thus require the stopping of the investigations.

[41] In support of this argument, reliance was placed on *Thornborn NO v Namibia Sport Commission*<sup>4</sup>. In that case, the court dealt with the relief of *mandamus*. The court stated thus:

'It is well settled that the failure on the part of a functionary to perform an administrative act is as irregular and unlawful as an administrative decision not properly taken. An aggrieved person may under the common law succeed in compelling a functionary to perform an administrative act where that functionary is under a statutory obligation to do so. This common law remedy flows from the

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<sup>4</sup> (A 202/2013) [2013] NAHCMD 264 (25 September 2013).

common law remedy of review, thus described by Innes CJ in *Johannesburg Consolidated Investment Co Ltd v Johannesburg Town Council* in the following terms:

“Whenever a public body has a duty imposed on it by statute, and disregards important provisions of the statute, or is guilty of gross irregularity or clear illegality in the performance of the duty, this court may be asked to review and set aside the proceedings complained of and set aside or correct them. This is no special machinery created by the Legislature: it is a right inherent in the Court, which has jurisdiction to entertain all civil causes and proceedings arising . . . in such a cause falls within the ordinary jurisdiction of the Court.”

[42] I have no qualms whatsoever about the correctness of the principle enunciated. The question to ask is whether the instant constitutes a proper case in which the court should, on the facts at hand, intervene and grant the relief sought by the applicant in the main prayer.

[43] As much as I am in agreement that there are pernicious effects of the unending investigations on the applicant’s well-being and his dignity, the court should, in my view act scrupulously. Such a course would unduly interfere with the 1<sup>st</sup> respondent’s statutory power discipline of his charges and may be construed as an act of judicial overreach by the court and in a domain not falling within the traditional province of the Judiciary.

[44] Furthermore, it would, in my view, be incorrect for the court to grant the main order sought in the circumstances, namely the stopping of the investigations. I say so for the reason that the court may be construed as shielding the applicant from possible allegations of impropriety. It would certainly be generally odious and contrary to the interests of the public and accountability for the court to be seen to be readily standing in the corner of someone accused of impropriety and ordering investigation into the allegations to be stopped forthwith.

[45] The court is acutely unaware of what the intricacies and causes of inordinate delay are as the 1<sup>st</sup> respondent has not been forthright with the

court. He has reserved the difficulties, if any, to the strict boundaries of his chest. It would, that notwithstanding, however set a bad precedent for this court, where there are serious allegations made, such as in this case, to order the investigations to be stopped.

[46] I am persuaded that the proper course, in the circumstances, that would cater both for the parties' rights and interests in a fair and balanced manner, would be to give the 1<sup>st</sup> respondent a time line within which to finalise the investigations so that this painful episode comes to an end one way or the other.

[47] To keep the applicant on tenterhooks for such an extended period is wrong, unconscionable and a serious violation of his right to presumption of innocence and dignity. In view of the long period for which this investigation has been in gestation, and considering the unanswered letters by the applicant's legal practitioners, I am of the view that the period suggested by the applicant in his alternative prayer, namely, 14 days, is on the short end of things. A period, that I consider reasonable, will be conveyed shortly.

#### Costs

[48] The behaviour of the respondents and their legal practitioners, as described above has been woeful. If the applicant had sought costs on the punitive scale against the respondents, I would in all probability, but subject to the submissions the respondent would make, have been most likely persuaded to grant costs on the higher scale given the gravity and invasiveness of their conduct. Costs on the normal scale will inevitably follow in the circumstances.

[49] As intimated in the body of the judgment, the respondent's legal practitioners are ordered, within 10 days of the delivery of this order, to explain on oath their non-compliance with the court's order dated 28 May 2020 and why they did not appear in court on 8 September 2020 for the



hearing. In this regard, they should explain why they should not be sanctioned therefor.

### Conclusion

[50] I am of the considered view that the applicant has made an unanswerable case that calls for the court's immediate intervention. The conduct of the 1<sup>st</sup> respondent in particular, calls for special censure as his handling of this matter leaves a lot to be desired. Our courts have commented adversely times without number, on the pervasive but unacceptable practice of some public officials, such as the 1<sup>st</sup> respondent, not to respond to correspondence and enquiries genuinely made by affected parties. The fact that the applicant is a subordinate to the 1<sup>st</sup> respondent, does not mean that his rights can be treated with levity and that, by sleight of hand, becomes water under the bridge. That cannot be correct as all people's rights matter, regardless of where they fall in the rungs of Namibian Police Force.

### Order

[51] Having anxiously considered this matter, I am of the opinion that the following order commends itself as condign in the particular circumstances of this case:

1. The First Respondent is hereby directed to conclude and disclose the findings of the investigation into the allegations of corrupt activities by the Applicant as contained in a report dated 16 January 2019, entitled, 'ALLEGED CORRUPT PRACTICES AND MISUSE OF A GOVERNMENT VEHICLE ALLOCATED TO STATE HOUSE, WINDHOEK, KHOMAS REGION' within thirty (30) days from the date of this order.
2. The First and Third Respondents are ordered to pay the costs of this application jointly and severally, the one paying and the other being absolved.

3. The Respondents' legal practitioners are ordered to explain on oath their non-compliance with the court order dated 28 May 2020 and their failure to appear in court on 9 September 2020 for the hearing.
4. The Respondents' legal practitioners are ordered to serve a copy of the sanctions' affidavit, required in paragraph 3 above, together with this judgment, on their respective clients and to furnish proof of service thereof to the Court.
5. The matter is postponed to **29 October 2020 at 08:30** for a sanctions hearing which the Applicant is excused from attending.

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T. S. Masuku  
Judge

## APPEARANCES:

APPLICANT: N. Mhata  
Of Sisa Namandje & Co. Inc., Windhoek

RESPONDENTS: No Appearance