



HIGH COURT OF NAMIBIA MAIN DIVISION, WINDHOEK

JUDGMENT

Case No.: HC-MD-CIV-APP-ATL-2020/00020

In the matter between:

MATHEUS KAMUPO

APPELLANT

and

VETERAN APPEAL BOARD

RESPONDENT

Neutral citation: *Kamupo v Veteran Appeal Board* (HC-MD-CIV-APP-ATL-2020-00020) [2021] NAHCMD 46 (17 Feb 2021)

Coram: PARKER AJ

Heard: **12 February 2021**

Delivered: **17 February 2021**

Flynote: Appeal – In terms of the Veterans Act 2 of 2008, s 40 – Appeals Board upholding decision of the Veterans Board in rejecting appellant’s application to be registered as a veteran – The Board gave reasons for their decision which were confirmed by the Appeals Board – Court finding that the Appeals Board did not misdirect itself on the law and facts – Court, therefore, disinclined to interfere with the Appeal Board’s findings of fact – Court held that it was unable to interfere with exercise of discretion by the Board and the Appeal Board because the Appeal Board

did not act capriciously or with bias and did not apply the law wrongly - Consequently, court dismissing appeal.

Summary: Appeal – In terms of the Veterans Act 2 of 2008, s 40 – Appellant’s application to be registered as a Veterans Board was rejected – The Appeal Board upheld the Board’s decision and the reasons therefor, namely, that appellant’s participation in the liberation struggle was unproven and the activities were ‘one-off’ activities not meeting the requirements of ‘persistently’ and consistently’ participation in the liberation struggle – Court finding that the Appeal Board did not misdirect itself on the law or the facts; neither did it act with caprice or bias, or upon the wrong application of the law – Consequently, court not entitled to interfere with decision of the Appeal Board and replace it with its own decision – Consequently, appeal dismissed.

ORDER

1. The appeal is dismissed.
2. There is no order as to costs.
3. The matter is considered finalized and is removed from the roll.

JUDGMENT

PARKER AJ:

[1] The instant appeal is against the decision of the Veterans Appeal Board which confirmed the decision of the Veterans Board (‘the Board’) rejecting appellant’s application to be registered as a veteran in terms of the Veterans Act 2 of 2008. Section 1 of Act 2 of 2008 enacts as to who qualifies as a veteran in terms of the Act. The appellant appears in person; and Mr Kadhila represents the respondent.

[2] The appellant relied on what he characterized as grounds of appeal. The grounds of appeal stated that the Appeal Board erred by arriving at the conclusion

that there is no consistency and truth in appellants version; that the Appeal Board erred by confirming the decision of the Board disapproving appellant's application; and, finally, that the Appeal Board misdirected itself by deciding that appellant's application was unsuccessful without hearing his version and that of his witnesses

[3] Such statements are not grounds of appeal at all but appellant's conclusions without setting out reasons for the conclusions. (*S v Gey van Pittius and Another* 1990NR 35 (HC)). In any case, as to the third statement, there is no truth in that statement because in his submission to this court, appellant informed the court that he had not brought along any witnesses to support his version. And his reason for not doing so, according to him, was that he had not been told to bring along any witnesses, even though in his application to the Board, he had named witnesses, and he did not give any reason why they were not available.

[4] The record indicates that his so-called participation on the liberation struggle were six disparate and occasional incidences that occurred on six separate days and attending meetings in the period 1988-1989 'until people came back from exile'. The Board's determination as appears on the record was that the activities of appellant 'depict occasional assistance during the liberation struggle'. Furthermore, appellant 'was not known in PLAN/Combat assistance during the liberation struggle: They were 'once-off' activities. The Board found further that appellant 'was not known in PLAN/Combat underground work'. Consequently the Board concluded that those activities did not satisfy the requirements of having consistently and persistently participated or engaged in underground activity in furtherance of the liberation struggle within the meaning of s 1 of the Veterans Act 2 of 2008.

[5] It is trite that a court on appeal will not easily interfere with findings of fact by the lower court or tribunal unless the lower court or tribunal misdirected itself. (*S v Simon* 2007 (2) NR 500 (HC)) I have no good reason to fault the findings of fact by the Board and as confirmed by the Appeal Board. Moreover, it is trite that if the lower court or tribunal has exercised its discretion on judicial grounds and for sound reason, that is, without caprice or bias or the application of the wrong principle, the appellate court will be very slow to interfere and substitute its own decision. (*Paweni v Acting Attorney General* 1985 (3) SA 720 (ZS)). The principle has been applied by

the court (see eg *S v Kuzatjike* 1992 NR 70 (HC); *Reuter v Namibia Breweries Ltd* Case No. HC-MD-LAB-APP-AAA-2018-00008 [2018] NAHCMD 20 (8 August 2018)). Furthermore, in order to respond to appellant, as Mr Kadhila submitted, the fact that something has not been mentioned by the Board and the Appeal Board does not mean that they were not considered. (*R v Dhlumayo* 1948 (2) SA 677 (A))

[6] I have carefully considered the record of proceedings before the Board and those before the Appeal Board. I have also taken into account the fact that the appellant is a lay litigant. Having done all that and having applied *S v Simon*; and *Paweni*, I come to the inexorable and reasonable conclusion that the appeal has no merit; and it should fail, and it fails.

[7] Based on these reasons, I order as follows:

1. The appeal is dismissed.
2. There is no order as to costs.
3. The matter is considered finalized and is removed from the roll.

C PARKER
Acting Judge

APPEARANCES:

APPELLANT:

M KAMUPO

In person

RESPONDENT

F Kadhila

Of Government Attorneys, Windhoek