

PD 61

REPUBLIC OF NAMIBIA



IN THE HIGH COURT OF NAMIBIA, MAIN DIVISION, WINDHOEK

RULING

Case Title: Namibian Gymnastics and The Namibia Sports Commission Namibia National Olympic Committee & Commonwealth Games Association Abner Axel Xoagub Joan Smit The Minister of Sports, Youth and National Service	Plaintiff 1 st Defendant 2 nd Defendant 3 rd Defendant 4 th Defendant 5 th Defendant	Case No: HC-MD-CIV-ACT-OTH-2021/02269 Division of Court: Main Division Heard on: On papers Order: 17 August 2021 Reasons: 19 August 2021
Heard before: Honourable Mr. Justice Sibeya		
Neutral citation: <i>Namibian Gymnastics v Namibia Sports Commission</i> (HC-MD-CIV-ACT-OTH-2021/02269) [2021] NAHCMD 376 (19 August 2021)		
1. Order: 2. 3. 1. The special pleas of <i>locus standi</i> raised by the first, second and fourth defendants must be determined prior and separate to the hearing of the merits of the plaintiff's claim. 4. 2. There is no order as to costs. 5. 3. The matter is postponed to 20 August 2021 at 09:00 for allocation for hearing dates for the special pleas of <i>locus standi</i> .		

Reasons for order:**SIBEYA, J**Introduction

[1] This court is for the moment seized with a single issue for determination, being whether or not the special pleas of *locus standi* raised by the first, second and fourth defendants should be heard and decided prior and separate from the merits of the plaintiff's claim. A special plea is a defence mounted against a claim but which is distinctive from or not discernible from the pleadings before it is raised.

[2] The parties at the opposite ends of this matter took incompatible positions with the defendants calling for a separation of the hearing of the special plea and plea on the merits while the plaintiff submitted contrariwise. This prompted the court to direct the parties to file brief written submissions on the subject in order to adequately hear the parties and speedily decide the said limited issue on papers without compromising the preciousness of time.

Background

[3] The plaintiff claims that it is a national sports body in terms of the Namibia Sports Act 12 of 2003 and is registered as a member of the first defendant with its objectives being to promote, organize and control gymnastics in Namibia. The plaintiff further avers that it is a national federation and member of the second defendant recognized as the sole national governing body for gymnastics in Namibia.

[4] The plaintiff claims that it was suspended from carrying out its affairs and business by the first and second defendants, which suspension was illegal with no basis in law.

[5] The defendants defended the action.

[6] The first, second, third and fourth defendants raised special pleas of *locus standi*. The said defendants pleaded that the entity that was suspended is the Namibia Gymnastic Federation (NGF) and not the appellant. They further averred that the first and second defendants have no

contractual relationship with the plaintiff as the plaintiff was not a member of the first or second defendants. Consequently, the plaintiff lacks the necessary *locus standi* to institute the action against the defendants.

[7] As stated hereinabove, the parties locked horns on whether the special pleas should be heard and decided jointly with or separate to the hearing of the merits of the plaintiff's claim.

[8] In the determination of the question raised, the court sought assistance from the parties and directed that brief written arguments be filed whereafter a decision will be made based on the papers in order to minimize legal costs on the parties. The parties complied and these are the reasons for the order made.

The Law and submissions by the parties

[9] Rule 63 (6) of the Rules of this Court provides that:

'Where it appears to the court *mero motu* or on the application of a party that there is in any pending action a question of law of fact which may conveniently be decided either before any evidence is led or separately from any question, the court may make an order directing the trial of that question in such manner as it considers appropriate and may order that all further proceedings be stayed until the question has been disposed of.'

[10] Mr. Du Pisani for the plaintiff submitted in his written arguments that the special pleas should be heard together with the merits of the plaintiff's claim as the basis of *locus standi* is inextricably linked and will therefore be cost effective. He placed reliance on a judgement of the Supreme Court of Appeal of South Africa of *Denel (Edms) v Vorster*¹ where it was stated that:

'Rule 33(4) of the Uniform Rules – which entitles a Court to try issues separately in appropriate circumstance – is aimed at facilitating the convenient and expeditious disposal of litigation. It should not be assumed that that result is always achieved by separating the issues. In many cases, once properly considered, the issues will be found not to be inextricably linked, even though, at first sight, they might appear to be discrete. And even where the issues are discrete, the expeditious disposal of the litigation is often best served by ventilating all the issues at one hearing, particularly where there is more than one issue that might be readily dispositive of the matter. It is only after careful thought has been given to the anticipated course of the litigation as a whole that it will be possible properly to determine whether it is convenient to try and issue separately. But, where the trial court is satisfied that it is proper to make such

¹ *Denel (Edms) v Vorster* 2004 (4) SA 481 (SAC) at para [3].

an order – and, in all cases, it must be so satisfied before it does so – it is the duty of that court to ensure that the issues to be tried are clearly circumscribed in its order so as to avoid confusion.’

[11] I hold no qualms with the said principle laid down in the interpretation of rule 33(4) of the Uniform Rules applicable to South Africa. I am further of the view that the passage quoted above finds application to rule 63(6) of the rules.

[12] What is apparent from rule 63 (6) is that the court has a discretion to determine whether a question of law or fact should be decided either prior to or separate from the hearing of the merits of the matter. In the exercise of its discretion, the court must bear in mind that the underlying objective of the rule is to ensure convenient and expeditious disposal of litigation. It is not a given that in every case where questions of law or fact is raised and applied for by any of the parties to be heard prior to or separately from the merits of the matter, that separation will be granted. The question of law or fact raised should be carefully considered in order to properly determine or not whether it will be convenient and expeditiously dispositive of the matter to separate the hearing.

[13] Mr. Ketjijere and Mr. Heathcote for the defendants submitted that the plaintiff lacks the required standing to institute action proceedings against the defendants and are persistent that the point of law *in limine of locus standi* be decided separate from the hearing of the plaintiff's claim against the defendants. Both counsel for defendants argue that if the point of *locus standi* is upheld, it will be dispositive of the plaintiff's entire claim. The defendants conclude their submissions that the issue of *locus standi* is a narrow subject which could be decided on expeditiously and with limited amount of costs.

Analysis

[14] The second to the fourth defendants only raised a point of law of *locus standi* in their plea and did not plea over to the merits of the plaintiff's claim. The first defendant on other hand pleaded over to the plaintiff's claim. The essence of the defendants, particularly the second to the fourth's plea is that the court is in the dark in respect of the said defendants' plea to the merits of the plaintiff's claim. It is therefore a daunting task to determine whether the plea of *locus standi* will be intertwined with the plea yet to be tendered by the said defendants to the merits of plaintiff's claim. It is therefore difficult to determine if the *locus standi* raised is inextricably linked to the merits of the plaintiff's claim.

[15] Stegmann AJ in *Sibeko and Another v Minister of Police and others*² at para 157H-I, stated the following:

‘One of the purposes which a special plea is designed to serve is the convenience to all parties and the court of dealing separately with an issue which, if the special plea is successful, will either eliminate or postpone any need to deal with other issues in the case. Another of its purposes is to avoid, if possible, the incurring of costs in relation to other issues when the special plea may prove to be decisive.’

[16] Subsequent to the special plea of *locus standi* raised, the plaintiff replicated that a properly constituted special general assembly of the plaintiff amended the plaintiff’s constitution to provide for a name change to Namibian Gymnastics. This is denied by the defendants who state that there was no properly constituted meeting. What is clear as day is that if the special plea raised by the defendants is upheld then the plaintiff’s claim will be disposed of. The special plea of *locus standi* therefore goes to the root of the plaintiff’s claim.

[17] It is my considered view that hearing and deciding the point of *locus standi* has the capacity to justly, speedily and cost effectively resolve the dispute between the parties and thus complainant with the overriding objectives of the rules.³ A refusal to hear separately the issues as sought by the defendants will mean that parties must attend to a case management conference, filing of witnesses on the merits of the plaintiff’s claim, attending to the pre-trial hearing followed by the trial which could be heard in the not so near future. A separate determination of *locus standi* on the other hand may be disposed of with limited time and time.

Conclusion

[18] In light of the foregoing findings and conclusions, I am of the considered view that the defendants’ submissions to have the issue of *locus standi* heard and decided prior and separate from the merits of the plaintiff’s claim carry weight over and above the non-separation. I am therefore of the opinion that this it will be convenient and appropriate hear and decide the point of *locus standi* prior to and separate from the hearing of the plaintiff’s claim.

[18] In the result, I make the following order:

² *Sibeko and Another v Minister of Police and others* 1985 (1) SA 151 (W). See also: *Minister of Police v Haunawa* 1989 (1) SA 742 (SWA) at 743.

³ Rule 1(3).

1. 1. The special pleas of *locus standi* raised by the first, second and fourth defendants must be determined prior and separate to the hearing of the merits of the plaintiff's claim.
2. 2. There is no order as to costs.
3. 3. The matter is postponed to 20 August 2021 at 09:00 for allocation for hearing dates for the special plea of *locus standi*.

Judge's signature	Note to the parties:
O Sibeya Judge	None
Counsel:	
Plaintiff:	1ST Defendant:
L Du Pisani Of Du Pisani Legal Practitioners Windhoek	R Ketjijere Of Government Attorneys Windhoek
	2ND, 3RD & 4TH Defendants:
	R Heathcote SC with G Dicks Instructed by Koep & Partners Windhoek