



“ANNEXURE 11”

IN THE HIGH COURT OF NAMIBIA

Case Title: Paramount Chief Mutjinde Katjua Ovaherero Traditional Authority vs Chief Vipuire Kapuuo The Minister Of Urban and Rural Development Standard Bank Namibia (Pty) Ltd	1 st Applicant 2 nd Applicant 1 st Respondent 2 nd Respondent 3 rd Respondent	Case No: HC-MD-CIV-MOT-GEN-2022/00126 Division of Court: High Court, Main Division Date of hearing: 5 - 6 April 2022 Delivered on: 12 April 2022
Neutral citation: <i>Paramount Chief Katjua v Chief Kapuuo</i> (HC-MD-CIV-MOT-GEN-2022/00126) [2022] NAHCMD 186 (12 April 2022)		
Result on merits: The urgent application is dismissed.		
COURT ORDER		
Having heard MR. BOESAK with MR. ELAGO , on behalf of the Applicant(s) and MR. CORBETT SC with MR. JACOBS and MR. ERASMUS , on behalf of the Respondent(s) and having read the papers filed of record for HC-MD-CIV-MOT-GEN-2022/00126:		
IT IS ORDERED THAT:		

1. The urgent application is dismissed.
2. The first applicant in his personal capacity shall pay the costs of the first respondent, which costs shall include the costs of one instructing and two instructed counsel.
3. The matter is finalized and removed from the roll.

REASONS FOR ORDERS:

[1] On 30 March 2022 applicants apply for urgent interdictory relief as follows:

'TAKE NOTICE THAT PARAMOUNT CHIEF MUTJINDE KATJIUA and OVAHERERO TRADITIONAL AUTHORITY (hereinafter called the applicants) intends to make application to this court for an order:

1.1 Condonation for the non-compliance with the forms and service provided for by the Rules of the above Honourable Court and hearing this application as one urgency in terms of Rule 73(3).

2.2 An order interdicting and restraining the first respondent from purporting to act on behalf of the applicant and/or being the duly authorized Acting Paramount Chief of the applicant.

3.3 An order interdicting and restraining the first respondent from proceeding with irregularly and unlawfully convened, purported, Chiefs Council meeting scheduled for the 7th to 8h April 2022.

4.4 An order interdicting and restraining the first respondent from in any manner interfering with the applicant's bank account held at the third respondent's institution, and/or interfering with any funds directed by the second respondent to the applicant's bank account.

5. An order to pay applicant's legal costs on a scale as between legal practitioner and own client, consequent upon the employment of one instructed and two instructing counsel.'

[2] First applicant brought the application in his capacity as the duly elected

Paramount Chief of the Ovaherero Traditional Authority (the second applicant).¹

[3] First applicant also stated that he act as the duly authorized representative of the second applicant by virtue of his election as the Paramount Chief of the Traditional Authority.²

[4] It is common cause that no resolution by the Ovaherero Traditional Authority was attached to the papers.

[5] In reply the first applicant rely on a resolution by the Senate (of second applicant) that he as newly appointed Paramount Chief has the executive power to represent the second applicant.³

[6] First applicant admitted that his appointment by the Senate is subject to the process stipulated in the Traditional Authorities Act for designation and recognition as chief of a traditional authority.⁴

[7] One of the advanced grounds for urgency of the first applicant was that the rights of the Senate and Chiefs Council, inclusive of the rights of first applicant as the duly elected Paramount Chief, in terms of sections 5, 6 and 12 of The Traditional Authorities Act, Act 25 of 2000, will be compromised if the application is not decided in his favour.⁵

[8] First respondent opposed the urgent application and denies urgency; the *locus standi* of first applicant; the authority of first applicant to bring the application on behalf of the Ovaherero Traditional Authority and to depose to the affidavits; and that first applicant has established the requirements of interdictory relief.

[9] Arguments were heard over two days from 14h00 on 5 and 6 April 2022, mainly because the first applicant has failed to properly index the papers as directed on 30 March 2022.

¹ Indexed record, page 7, paragraph 2.

² Indexed record, page 7, paragraph 3.

³ Indexed record, page 377 and 378, paragraph 3.

⁴ Indexed record, page 383, paragraph 9.

⁵ Indexed record, page 23 and 24, sub-paragraph 39.4.

[10] In argument on behalf of applicants reliance were placed on section 9(3) of the Traditional Authorities Act, Act 25 of 2000 (the Act) arguing that first applicant is the chairperson of the Chief's Counsel (and not the first respondent) and as such has the *locus standi* and authority on behalf of second applicant to have brought the urgent application. This, it was contended, together with what the first applicant has deposed to in his founding and replying affidavit, puts paid to the dispute concerning *locus standi* and authority.

[11] What is clear is that first applicant view himself as the duly elected or appointed Paramount Chief of the second applicant.

[12] Section 1 of the Act defines "designation", in relation to the institution of a chief or head of a traditional community as including the election or hereditary succession to the office of a chief or head of a traditional community, and any other method of instituting a chief or head of a traditional community recognized under customary law.

(my underlining and emphasis)

[13] Section 1 of the Act further defines a "traditional leader" as meaning a chief, a head of a traditional community, a senior traditional councilor, or a traditional councilor designated and recognized or appointed or elected, as the case may be, in accordance with this Act, and by whatever traditional title named.

(my underlining and emphasis)

[14] Section 6(1) of the Act provides that if the Minister is satisfied that a chief or head of a traditional community has been designated in accordance with the requirements of the Act, the Minister shall notify the President.

[15] Section 6(2) provides that the President shall on receipt of the required notice by the Minister, recognise the designation of the chief or head of the traditional community concerned by proclamation in the Gazette.

[16] Section 6(3) enacts that "Notwithstanding any other provision to the contrary in this Act contained, a chief or head of a traditional community shall be deemed not to have been designated under this Act, unless such designation has been recognised under this

section."

(my underlining and emphasis)

[17] It is thus clear that the first applicant lacks the *locus standi* to have brought this application as the Paramount Chief of the Ovaherero Traditional Authority, nor did he establish a clear right or the other requisites for interdictory relief. First and second applicant's substantial redress in due course is to be found in the proper application of the provisions of the Act.

[18] In the premises the following orders are issued:

[18.1] The urgent application is dismissed.

[18.2] The first applicant in his personal capacity shall pay the costs of the first respondent, which costs shall include the costs of one instructing and two instructed counsel.

[18.3] The matter is finalised and removed from the roll.

Judge's signature:	Note to the parties:
Oosthuizen J	None
Counsel:	
Applicants	Respondent
Mr Boesak assisted by Mr Elago Instructed by Tjombe–Elago Inc. Windhoek, Namibia	Mr Corbett SC, assisted by Mr Jacobs and Mr Erasmus Instructed by PD Theron & Associates Windhoek, Namibia