

REPUBLIC OF NAMIBIA

HIGH COURT OF NAMIBIA



MAIN DIVISION, WINDHOEK

JUDGMENT

Case Title: JONATHAN HUNIBEB // THE COMMISSIONER GENERAL RAPHAEL HAMUNYELA OF THE NAMIBIAN CORRECTIONAL SERVICE & 4 OTHERS	Case No: HC-MD-CIV-MOT-GEN-2021/00210
	Division of Court: HIGH COURT (MAIN DIVISION)
Heard before: HONOURABLE LADY JUSTICE SCHIMMING-CHASE	Date of hearing: 21 APRIL 2022
	Delivered on: 21 APRIL 2022
Neutral citation: <i>Hunibeb v The Commissioner General Raphael Hamunyela of the Namibian Correctional Service</i> (HC-MD-CIV-MOT-GEN-2021/00210) [2022] NAHCMD 210 (21 April 2022)	
The order: Having heard Mr Hunibeb , the applicant in person and Mr Kauari , on behalf of the respondent and having read other documents filed of record: IT IS ORDERED THAT: 1. The respondents' late filing of their heads of argument is condoned. 2. The application is dismissed. 3. There is no order made as to costs. 4. The matter is removed from the roll and regarded as finalised.	
Below are the reasons for the above order:	
Schimming- Chase J:	

Introduction

[1] This is an opposed motion wherein the applicant seeks the following relief:

1. That the Honourable Court to condone my non-compliance with the court order.
2. When I started serving my sentence the prison act of 1998 No.17 of 1998 was still operative (sic) until it was substituted by the correctional service Act 9 of 2012.
3. That the relevant National Release Board (the 3rd Respondent) will act in accordance with section 105(1)(a)(ii) of the correctional service Act, Act No 9 of 2012 and this they shall do within a period of 30 days from the date the court order is issued.
4. That the Applicant be considered for placement on full parole in terms of the correctional service Act, Act No. 9 of 2012.
5. The Honourable Court to strongly condemn and reprimand (sic) the Respondents for orchestrating colossal (sic) infringements (sic) against the Applicants.
6. The Court to interdict the Respondents from unlawfully protracting or interfering with the Applicants sentence and the parole contrary to the rule of law.
7. The Honourable Court to direct and order that the Respondents must not in any manner whatsoever harass , condemn, threaten and abuse the Applicants for initiating civil litigation against the Respondents.
8. To declare the monotorius (sic) unlawful infringements.
9. The Court to direct that the Namibian Correctional Service through the first Respondents to initiate timelous (sic), consistent corrective measures to ensure that the parole process is strictly complied with as per the correctional service Act , and to adopt a competent monitoring and evaluation process of the parole recommendation and ensure punctual feedback.'

[2] The respondents are employees of the Ministry of Home Affairs, Immigration and Safety and Security and are cited and sued in their official capacities.

The reasons for the order crisply set out below

[3] All that the applicant avers in his founding affidavit is that he was sentenced on 26 November 2010 to twenty years and six months of imprisonment for various offences. Thereafter, the applicant sets out the names of the respondents and that each was cited in an official capacity. Lastly, he prays that this court grants him the relief prayed for in the notice of motion.

[4] The gist of the opposition to the applicant's application is that the founding affidavit sets out no basis for the relief prayed for in the notice of motion.

[5] It is trite law that an applicant must make out his case in his founding affidavit. If scant material or incomprehensible facts are set out in the founding affidavit, the applicant runs the risk of the application being dismissed. In *Nelumbo and Others v Hikumwah and Others* 2017 (2) NR 433 (SC), the Supreme Court had the following to say on this aspect:

[41] Since affidavits constitute both the pleadings and the evidence in motion proceedings, a party must make sure that all the evidence necessary to support its case is included in the affidavit: *Stipp and Another v Shade Centre and Others* 2007 (2) NR 627 (SC) at 634G-H. In other words, the affidavits must contain all the averments necessary to sustain a cause of action or a defence. As was stated in *Swissborough Diamond Mines (Pty) Ltd and Others v Government of the Republic of South Africa and Others*:

"It is trite law that in motion proceedings the affidavits serve not only to place evidence before the Court but also to define the issues between the parties. In so doing the issues between the parties are identified. This is not only for the benefit of the Court but also, and primarily, for the parties. The parties must know the case that must be met and in respect of which they must adduce evidence in the affidavits."

As the adage goes, in motion proceedings you stand or fall by your papers.'

[6] The applicant's founding affidavit does not contain the necessary averments to sustain a cause of action. It did not set out the basis upon which he prayed for the relief as set out in his notice of motion. Much of the relief sought is entirely incompetent if not incomprehensible.

[7] In this case, the applicant falls by his papers.

Conclusion

[8] In the result, the application is dismissed and no order is made as to costs.

Costs

[9] No order as to costs for the following reasons – The applicant currently incarcerated. The defendants are represented by the Government Attorneys. In the circumstances of this case, particularly of the applicant, I am of the considered view that a costs order would not be in the interest of justice.

Judge's signature:	Note to the parties:
SCHIMMING-CHASE Judge	Not applicable.
Counsel:	
Applicant	First Respondent
J HUNIBEB <i>In person</i>	N KAUARI <i>of</i> Office of the Government Attorney, Windhoek