

REPUBLIC OF NAMIBIA

HIGH COURT OF NAMIBIA



MAIN DIVISION, WINDHOEK

RULING

PRACTICE DIRECTIVE 61

Case Title: DANIEL JACOBUS BAISAKO // MINISTER OF HOME AFFAIRS, IMMIGRATION, SAFETY AND SECURITY & 2 OTHERS	Case No: HC-MD-CIV-MOT-REV-2022/00375
	Division of Court: HIGH COURT (MAIN DIVISION)
Heard before: HONOURABLE MR JUSTICE PARKER, ACTING	Date of hearing: 18 APRIL 2023
	Delivered on: 7 JUNE 2023
Neutral citation: <i>Baisako v Minister of Home Affairs, Immigration, Safety and Security</i> (HC-MD-CIV-MOT-REV-2022/00375) [2023] NAHCMD 300 (7 June 2023)	
Order: 1. The application is dismissed with costs on the scale as between party and party. 2. The matter is finalised and removed from the roll.	
Reasons for the above order:	
PARKER AJ: [1] The principal and substantial relief sought is a declaration (in para 1 of the notice of motion) that the application was brought within a reasonable time. In para 2 the applicant, represented by Ms Lubbe, seeks an order reviewing and setting aside the decision of the second respondent transferring the applicant from Internal Investigation, Sub-Division of the Namibian Police Force in Lüderitz to the Administration Unit of the Keetmanshoop Police Station. Alternative to para 2 is a prayer in para 3 for an order for a declaration that the said transfer offends Article 18 of the Namibian Constitution. I do not see any jurisprudential	

difference between the order sought in para 2 and para 3 in terms of our administrative law.

[2] The respondents have moved to reject the application and they have raised three preliminary objections, namely, prescription in terms of s 39(1) of the Police Act 19 of 1990, failure to exhaust internal statutory remedies and non-authentication of the founding affidavit. I shall consider the first preliminary objection first, because if were to uphold it, it would be dispositive of the application.

[3] I make the point that, as Mr Ncube, counsel for the respondent, submitted, s 39(1) of the Police Act is a limitation clause properly so called. It limits the time within which proceedings by aggrieved persons must be instituted, else they are out of court.¹ Limitation clauses 'are of great importance in administrative law.'² Significantly, the Supreme Court held as long ago as 2007 in *Minister of Home Affairs v Majiedt and Others*,³ that the limitation clause in s 39(1) of the Police Act is Constitution compliant. In *Hango v Shipena and Another*⁴, the court held that a failure to institute proceedings within the time limit prescribed by s 39(1) is fatal. Such applicant would be out of court, unless the responsible minister has waived compliance with the limitation clause in s 39(1) of the Police Act. In this instance the minister has not waived applicant's compliance with s 39(1).

[4] On the papers, I find that the impugned decision was made on 12 August 2021 and the applicant became aware of it the same day. According to his legal representatives, the applicant was '[O]n 12 August 2021 ... informed of his transfer' Thus, in terms of the limitation clause in s 39(1) of the Police Act, the applicant ought to have brought the application on or before 11 August 2021; but he brought it on 15 August 2021. In that regard, it is important to note that there is cogent evidence before the court, establishing that as on 12 August 2021, the applicant knew the exact reason why the second respondent decided to transfer him. Consequently, I respectfully reject the submission by the applicant's counsel that the applicant sought persistently in vain from the decision taker for a reason for his transfer. Most telling is that the applicant's professed ignorance of the reason for his transfer lacks credibility.

[5] Accordingly, I find that there is no application properly before the court for the court to consider. The applicant is out of court. Consequently, I uphold the respondents' first point *in*

¹ *R v Environment Secretary, ex parte Ostler* [1977] QB 122 (CA).

² Lawrence Baxter *Administrative Law* (1991) at 733.

³ *Minister of Home Affairs v Majiedt and Others* 2007 (2) NR 475 (SC).

⁴ *Hango v Shipena and Another* [2022] NAHCMD 99 (9 March 2022) para 12.

limine. The holding is dispositive of the application, as I intimated previously.

[6] In the result, I order as follows:

1. The application is dismissed with costs on the scale as between party and party.
2. The matter is finalised and removed from the roll.

Judge's signature:	Note to the parties:
	Not applicable.
Counsel:	
Applicant	Respondents
D LUBBE <i>of</i> Lubbe & Saaiman Incorporated, Windhoek	J NCUBE <i>of</i> Office of the Government Attorney, Windhoek