

REPUBLIC OF NAMIBIA



HIGH COURT OF NAMIBIA MAIN DIVISION, WINDHOEK

JUDGMENT

Case no: HC-MD-CIV-MOT-GEN-2020/00522

In the matter between:

ALEX KAMWI MABUKU KAMWI

APPLICANT

and

VETERANS BOARD

1ST RESPONDENT

EXECUTIVE DIRECTOR MINISTRY OF DEFENCE

AND VETERANS AFFAIRS

2ND RESPONDENT

THADEUS ERAGO ERAGO

DIRECTOR FOR DIRECTORATE POLICY

HERITAGE AND REGISTRATION

3RD RESPONDENT

Neutral citation: *Kamwi v Veterans Board* (HC-MD-CIV-MOT-GEN-2020/00522)
[2023] NAHCMD 394 (7 July 2023)

Coram: TOMMASI J

Heard: 25 July 2023

Delivered: 7 July 2023

Flynote: Civil Procedure – Dispute of facts – Test to be adopted – Plascon Evans principle – Accepting the facts as alleged by the applicant which have been admitted by the respondent together with facts alleged by respondent which cannot be disputed by applicant.

Statute – Veterans Act No 2 of 2008 – Suspension of the applicant's allowance.

Summary: The applicant, a registered member of the Veteran of the Liberation Struggle of Namibia Fund (Veterans Fund), received an allowance in terms of the Veterans Act 2 of 2008. This allowance was suspended on the basis that the applicant was receiving a monthly allowance from the Namibia National Liberation Veterans Association (NNLVA). It was not permissible, according to the Veterans Fund.

The applicant avers that there was an oral agreement reached between him and the third respondent in terms whereof his allowance was to be reinstated. The applicant avers that the respondents breached the oral agreement and he therefore seeks a declaratory order enforcing the settlement agreement. His allowance was eventually reinstated but he seeks an order for the payment of his allowance from date of his suspension ie 28 February 2019 to 20 September 2020 in the amount of N\$117 800.

The third respondent does not dispute having met the applicant and having discussed the suspension of the allowance or the reinstatement of his allowance. He however denies the fact that he entered into an oral agreement with the defendant. This clearly raises a factual dispute between the parties on a central issue.

Held, that the dispute can only be resolved by applying the Plascon-Evans principle ie to accept the facts as alleged by the applicant which has been admitted by the respondent, together with the facts alleged by the respondent which cannot be disputed by the applicant.

Held, further, that the denial by the third respondent cannot be said to be so far-fetched or clearly untenable that the court is justified in rejecting them on the papers before it. The respondent's version is thus accepted and the applicant has failed to prove that he concluded an oral agreement with the third respondent.

Held, further, that even in the event that such an oral agreement is said to have been entered into, it would not be binding on the board. Section 7 of the Veterans Act stipulates that the affairs of the fund shall be managed and controlled by the board. The board, collectively, must manage and control the affairs of the fund. The board may in terms of s 21(2)(c) delegate or assign its power to a committee. No allegation has been made that the third respondent was empowered in the terms of s 21(2)(c) by the applicant.

Held, further, that s 26 indemnifies the fund, a board member, or a staff member for anything bona fide done in the performance of any function or duty in terms of the act.

ORDER

1. The applicant's application is dismissed with costs.
2. The respondents are to pay the applicant's costs of the interlocutory application, which costs shall be limited to the disbursements incurred by the applicant and which costs is limited in terms of rule 32(11).
3. The applicant is to pay the respondents' costs of the main application.
4. The matter is removed from the roll and regarded as finalised.

JUDGMENT

TOMMASI J:

Introduction

[1] The applicant, a registered member of the Veteran of the Liberation Struggle of Namibia Fund (Veterans Fund), received financial assistance in the form of a monthly allowance in terms of the Veterans Act 2 of 2008 (the Act). The applicant claims that his veteran's allowance was unlawfully suspended.

[2] The first respondent is the Veterans Board (the board) established by s 14 of the Act. The second respondent is the Executive Director of defence and Veterans Affairs. The third respondent is Mr Erago Thaddeus Erago who was, at the time of the institution of these proceedings, the acting Deputy Executive Director of the Ministry of Defence and Veterans Affairs. The respondents do not deny that the monthly allowance of the applicant was suspended but claims that the applicant was not entitled to it as he was receiving a monthly allowance from the Namibia National Liberation Veterans Association (NNLVA). Their position is that the applicant may in terms of s 29(2) of the Act be entitled to financial assistance if he satisfies the board that he is a person who is not employed, or if employed, receives an income which is less than the prescribed amount (N\$36 000 per annum as per Regulation 7 of GN 168). They aver that the income he received from NNLVA exceeded the prescribed amount.

[3] The applicant further claims that he entered into an oral agreement with third respondent for the reinstatement of his allowance on 6 November 2019. His allowance was eventually reinstated but he avers that the respondents breached the agreement to pay his allowance from 28 February 2019 to 20 September 2020. He now seeks an order for the payment of his allowance from 28 February 2019 to 20 September 2020 in the sum of N\$117 800 as per the oral agreement.

Background

[4] The facts are common cause and can be summarised as follows: On 16 April 2009 the applicant's status as a veteran was approved by the Veterans Board. He was thus, in terms of the provisions of the Act, entitled to receive assistance from the Fund subject to the provisions of the Act. He received a grant of N\$2 200 from April 2009 and this was increased to N\$6 200 during 2013.

[5] On or about 1 September 2010 the applicant was appointed as the Vice President of the Namibia National Liberation Veterans Association (NNLVA), a non-profit association until 17 October 2017. He was however suspended from the leadership of the NNLVA from July 2012 to December 2014. He resumed his position as Vice President during January 2015 during or about 2017 when he was appointed as the Secretary-General of NNLVA. The respondents aver that the applicant continued to receive his veteran's allowance throughout the time he held these two positions but agree that it was lawfully suspended for the period as alleged by the applicant.

[6] On 13 July 2012, the Chairperson of the board notified the applicant in writing of its decision to terminate the monthly financial assistance to members of the leadership of the NNLVA which included the applicant. The reason given for the discontinuance of the monthly assistance was the fact that the office bearers was not entitled to receive assistance from the fund if he or she is employed or receives an income which is more than the prescribed amount¹. It came to the attention of the board that the office bearers were receiving monthly allowances/salaries. The applicant was suspended from the leadership of the NNLVA at the time this decision was communicated to the office bearers. For the period he was so suspended from the NNLVA, this was not applicable to the applicant as he did not receive an allowance/salary from the NNLVA during his suspension.

¹ Veterans Act 2 of 2008 at s 29(2).

[7] The applicant failed to inform the board, when he was reinstated in his previous leadership position with the NNLVA during January 2015, of the change of status as is required by regulation 10(2)(a)(iii) of Government notice No 168.

[8] On 28 February 2019 the applicant's monthly assistance was suspended until 20 September 2020.

[9] On 4 March 2019 the applicant addressed a letter to the Chairperson of the board requesting that his grant be re-instated. On 5 April 2019, the Chairperson of the Veterans Board in his capacity as the Executive Director, replied that they were informed in a letter dated 7 July 2017 that he was in full time employment with the Association and was receiving a regular and uninterrupted salary although the applicant presented himself at the Veterans Head Office as a beneficiary of the veterans grant. He replied to this letter on 9 April 2019 but received no reply. He pointed out that the payment he received was irregular as the funding of the NNLVA was enough only to sustain the organisation for a four or five months.

[10] Aggrieved by the decision of the board, he filed an appeal with the Veterans Appeal board (the Appeal Board) against the decision of the board to suspend the payment of his allowance.

[11] The applicant avers that he entered into an oral agreement with the third respondent on 6 November 2019. In support hereof the applicant inter alia submitted a copy of his bank account for the month of October 2019 reflecting no payment into that account. He further submitted a copy of the bank accounts of NNLVA dated 5 November 2019 showing a balance of N\$33 494.06 and N\$138 417.04 as proof that the association does not have funds. The respondents however provided the court with the applicant's payment records which shows that he received a salary/allowance from NNLVA for the entire duration of this period ie from February 2019 to September 2020.

[12] The appeal served before the Appeal Board on 15 July 2020. The Appeal Board stated its mandate is to consider appeals delivered from the decisions of the board and noted the absence of a decision by the board. In addition hereto the Appeal Board noted that the applicant confirmed his withdrawal of his appeal. The Appeal Board noted the oral agreement which was entered into between the applicant and the Department which was confirmed by the applicant under oath. The Appeal Board decided to remove the matter from the roll and to refer the matter back to the board for its consideration and decision.

[13] On 19 March 2020 the applicant had a meeting with the Executive Director of Veterans Affairs, Mr Abraham lilonga. They discussed, inter alia, the date on which his allowance would be reinstated. The applicant recorded the answer given to him by Mr lilonga to the effect that he was aware of the matter and the applicant must just be patient until the budget is finalised in April 2020.

[14] The applicant filed this application on 26 November 2020 i.e. after the resumption of the payment of his allowance from the Veterans Fund. He labels his application as an application for default judgment against the respondents for failing to re-instate his grant.

Relief claimed by the applicant

[15] The applicant sets out 7 prayers in his Notice of Motion which in a nutshell boils down to the following prayers:

(a) Default Judgment for payment in the sum of N\$117 800 which represents the monthly allowance for the period from 28 February 2019 to September 2020 as per the agreement entered into with third respondent together with interest at the rate of 17 percent calculated monthly from 28 February 2019 up to September 2020.

(c) That the suspension of the applicant's grant be declared unlawful and illegitimate.

(d) That the oral agreement entered into between the third respondent on behalf of the Veterans Affairs and the applicant in person on 6 November 2019 and noted as such by the Veterans Appeal Board on 17 July 2020 be held as binding.

(e) Defendants to pay the costs of suit jointly and severally, the one paying the other to be absolved.

The Dispute

Applicant's case

[16] The applicant holds the view that he was never a full time employee of the NNVLA, that it is a voluntary organisation and anyone working for it does so voluntarily regardless of whether he or she receives a stipend or honorarium or not. He avers that the respondents were not entitled to suspend his allowance from February 2019 to September 2020 on the basis that he was purportedly employed and was receiving a salary from NNVLA.

[17] The applicant further avers that the Executive Director an/or the board acted *ultra vires* by suspending his allowance. According to the applicant, the only power the board has according to s 34(4) and (5) of the Act, is to recover payments made to a veteran which he or she was not entitled to receive.

[18] The heart of the applicant's case is that on 6 November 2019, the third respondent invited him to his office in order to discuss and reach an amicable settlement concerning the reinstatement of his allowance. The applicant avers that they reached an oral agreement in terms whereof; (a) payment of his allowance would be reinstated as from February 2019; (b) that the applicant would withdraw his appeal; and (c) that the fund would withdraw its claim against the applicant.

The Respondent's case

[19] The main answering affidavit is deposed to by Ms Threphine Panduleni Kamati, the Executive Director of the Minister of Defence and Veterans Affairs. The respondents raised several points *in limine*.

[20] The first point *in limine* is that the application has been prematurely brought before this court as the applicant failed to exhaust the internal remedy provided for by s 40 of the Act. Ms Kamati makes the point that the applicant only attempted to exhaust the internal remedy by noting an appeal to the Appeal Board which he subsequently withdrew.

[21] The second point *in limine* is that the oral agreement allegedly entered into between the applicant and third respondent and which the applicant seeks to have it declared binding on the respondents, is void *ab initio* and ultra vires the Act as it is in conflict with s 29(2) of the Act read with regulation 7 as well as the decision of the board of 13 July 2012.

[22] The third point *in limine* is that s 26 of the Act places a limitation on the nature of the reliefs sought by the applicant. Section 26 provides, *inter alia*, that no liability attaches to the fund, any member of the board, any member of the committee of the board, any staff member of the ministry in respect of anything done or omitted to be done in the *bona fide* performance of any function.

[23] The crux of the respondents' case on the merits is that the applicant received N\$27 960 month in his capacity of an office bearer of the>NNLVA for the entire period of the dispute. Their reasoning is that the applicant was not entitled to receive financial assistance in the form of a monthly allowance from the fund as he was earning an income in excess of the minimum amount (N\$36 000 per annum) provided for in terms of the provisions of the Act read with the regulations. The respondents reason that some of the veterans who were office bearers of the>NNLVA, who were required to do

so in terms of the Act and the regulations, failed to inform the board of their change in status and this was brought to the board's attention during 2012. The board addressed a letter to the Executive Committee of the NNLVA, informing them that their allowance would henceforth be suspended and that they would accordingly not receive an allowance from the fund. A further proof was provided in the form of the board's decision/resolution to suspend the applicant's allowance, dated 21 -22 October 2015 in terms whereof authorisation was given to suspend the financial assistance to all veterans with an income exceeding the prescribed amount of N\$36 000 per annum.

[24] The third respondent denies having entered into an oral agreement with the applicant and Ms Kamati denies that the third respondent has the power to enter into an agreement with the applicant which would be binding on the board and claims that such agreement would be void *ab initio* and *ultra vires* the provisions of s 29(2) read with regulation 7.²

Submissions

Applicant

[25] Mr Kamwi, the applicant in person, in his argument, raised a point *in limine* in the form of a plea of *res judicata*. The background to this plea is the following: during the course of the proceedings, the respondents brought an application for leave to join the appeal board as they held the view that the board has a direct and substantial interest in the outcome of the proceedings. The application was dismissed as the court held that the appeal board did not have an interest in the proceedings and therefore it was not necessary to join the appeal board as a party to the proceedings. The applicant maintained that all the issues relied on by the respondents were decided upon by the court in the court's ruling on the joinder application. He maintains that such issues cannot be re-opened in the main application because the judgment on the joinder issue operates as *res judicata*. He is of the view that the court's judgment on the joinder issue

² See the third point raised in limine.

is appealable because it has the effect of disposing of a substantial portion of the relief sought by the respondents in the main action. He further argues that the Appeal Board's decision was final and could not be adjudicated upon again and it must just be given effect to by the respondents.

[26] Mr Kamwi referred the court to the English case of *Printing Registering Company v Sampson*³ in support for his submission that:

'if two persons of sound mind, capable of contracting and entering into a lawful agreement, a valid agreement arises between them ...' and that such an agreement is "sacred and shall be enforced by the Courts'.

[27] Mr Kamwi also argued that the board was aware of the fact that he was an office bearer and that he was receiving an allowance but did nothing for the entire period before the relevant period under consideration.

The Respondents

[28] Ms Makemba, counsel for the respondents, in view of the fact that there is clear dispute of fact and the fact that the applicant ought to have instituted action proceedings and not motion proceedings, argued that the points of law raised will be dealt with in the same context and in conjunction with the merits of the matter

[29] Ms Makemba submitted that the purported oral agreement between the applicant and third respondent to reinstate the allowance is *ultra vires* the enabling act as it was firstly not sanctioned by the board in terms of s 21 of the act and is secondly contrary to the provisions of s 20(2) of the Act read with regulation 7. She relies on *Namibian Employers' Federation and Others v President of the Republic of Namibia and Others*⁴ where the court had the following to say:

³ *Printing Registering Company v Sampson* (1875) 19 EQ.

⁴ *Namibian Employers' Federation and Others v President of the Republic of Namibia and Others* [2020] NAHCMD 24.

‘The ultra vires doctrine in simple terms means that a functionary has acted outside his powers and as a result the function performed becomes invalid. The rule forms part of the principle of legality, which is an integral component of the rule of law.’

[30] Ms Makemba argued that the alleged oral agreement which the applicant seeks to enforce is an attempt to circumvent the provisions of the Act. Furthermore, she submitted that the applicant is misinterpreting the extent of the powers of the third respondent and/or the alleged department.

[31] In response to Mr Kamwi’s argument that the board is estopped from denying that the third respondent’s authority to conclude the oral agreement, Ms Makemba submitted that the board cannot be estopped because even if such an agreement had been concluded, the third respondent would have acted *ultra vires* the provisions of the Act and had no power or authority to enter into such an agreement.

Discussion

Points *in limine*

Res judicata

[32] *Res judicata*, (a thing adjudicated) bars the same parties from litigating a second lawsuit on the same claim and any other claim arising from the same transaction that could have been but was not raised in the first suit.

[33] In my ruling for the application for joinder I concluded thus:

‘The matter before court is not an appeal against the ruling of the Appeal Board in terms of section 43 and that means that there is no real interest of the Appeal Board in the proceedings before this court.’

[34] It cannot reasonably be construed that, in dealing with the issue of joinder, the court also made a ruling on the merits or that the said ruling had any effect on the merits

let alone a final effect. The court concluded that the construction of the ruling of the appeal board remains a live issue between the parties clearly leaving the door open for the parties to address the court on this issue in the main application. The ruling was purely interlocutory and has no final and definitive effect on the merits. This point *in limine* raised by the applicant is clearly without any merit. It is for these reasons that the plea of *res judicata* is dismissed.

Failure to exhaust internal remedies

[35] The respondents point is that the applicant failed to exhaust his remedy provided by s 40 which in essence gives a person aggrieved by the decision of the board, the right to appeal to the appeal board within 90 days from the date he or she has been notified of the impugned decision of the Board.

[36] Given the undisputed facts that the applicant appealed to the Appeal Board, that the matter was heard and a ruling was made, it can hardly be said that the applicant has failed to exercise his right to appeal. It must be born in mind that even if the purported agreement is denied by third respondent, that the applicant firmly held the view that an agreement was entered into at the time the Appeal Board had set the matter down to be heard. It was for this reason that he withdrew his appeal. It must be stated clearly that this does not mean that the court concludes that such an agreement was in place but it merely refers to the mind-set of applicant at the time.

[37] Having regard to above undisputed facts it can hardly be said that the applicant failed to exhaust the internal remedies. This point *in limine* is similarly without merit and is dismissed.

Agreement void ab initio and ultra vires s 29(2) of the Act read with regulation 7

[38] This point is intricately linked to a factual finding the court must determine ie whether or not such an agreement has been entered into and if so what the effect

thereof would be. The respondents' argument is premised on the fact that, if such an oral agreement was concluded, it would have been *ultra vires* the enabling statute and regulation. The point *in limine* is based on a hypothetical factual finding and it is at this stage premature. It cannot therefore be entertained *in limine* as it is dependent on a finding which must still be made on the merits.

Limitation of liability in terms of s 26 of the Act.

[39] This point *in limine* suffers the same ailment as the previous point i.e. that it is prematurely raised. The liability of those who were involved in the conclusion of the purported agreement is also dependant on whether or not the oral agreement has in fact been concluded between the parties. This point therefore cannot be entertained at the outset of the proceedings.

On the merits – Issues for determination

[40] There were a number of issues which the court was called upon to decide both in facts and in law. These issues are narrowed down to the following: (a) is the relief sought by the applicant competent in the circumstance of the present matter, (b) did the board take the decision to suspend the financial assistance to the applicant, (c) did the applicant prove that an oral agreement was entered into between him and the third respondent, and if so whether that agreement is binding on the board, (d) did the Appeal Board make a decision which is binding on the board?

Discussion

Is the relief sought by the applicant competent in the circumstance of the present matter?

[41] The application for default judgment herein is clearly not the correct procedure adopted in light of the fact that the respondents opposed the relief sought and had filed

extensive answering affidavits. Whether to approach the court by way of motion or to institute action proceedings is a decision a litigant ought to take before commencing proceedings. The rules clearly stipulate that default judgment can only be applied for and granted in an action proceedings where the defendant(s) had failed to enter an appearance to defend. The relief thus sought in the present matter in the form of default judgment is irregular firstly because the wrong procedure has been adopted and secondly because there has been no default by the respondents who opposed the matter and filed opposing affidavits. This prayer therefore stands to be struck.

Did the board take the decision to suspend the financial assistance to the applicant?

[42] Much has been made in the founding papers by the applicant of the fact that the decision to suspend the allowance was unlawful and illegitimate on the ground that the decision was made in the absence of the board's decision. The respondents proved, by way of a resolution adopted by the board at a meeting held on 21 – 22 October 2015 which was attached to the answering affidavit of Ms Kamati, that the board authorised the suspension of the financial assistance to those veterans (including the applicant) who were receiving an income of more than the prescribed amount of N\$36 000 per annum. The allegation by the applicant that the decision to suspend the financial assistance was made in the absence of a board decision is therefore incorrect as it is contradicted by documentary evidence. Confronted with the evidence adduced, the applicant in his reply argued that the issue at hand is not the recovery of money, rather the suspension of his financial assistance without a decision authorising them to suspend it.

[43] The resolution provided to this court is clear. The board resolved that payment to all veterans with income exceeding the prescribed amount as per s 29(2) of the Act, 2 of 2008, be suspended.

[44] Section 29(2) provides as follow:

'A registered veteran is, subject to the provisions of this Act, entitled to receive assistance from the Fund if he or she satisfies the Board that he or she is a person who is not employed, or if employed, receives income which is less than the prescribed amount.'

[45] Regulation 7 reads as follow:

'The amount prescribed for the purposes of s 29(2) of the Act is N\$36 000.00 per annum.'

[46] The jurisdictional fact for the resolution to find application, is only to determine whether the concerned veteran is receiving an income in excess of the N\$36 000. To this end Ms Kamati enclosed proof that the applicant received an income for the period for which he is claiming payment i.e. from 28 February 2019 to 20 September 2019. The applicant submitted only one bank statement for one month which was attached as support for his allegation that an oral agreement has been entered into between himself and the third respondent. The applicant failed in reply to address the proof of payment made.

[47] In light of the clear wording of the resolution, the applicant's allegation in this regard is thus without substance. The applicant failed to demonstrate that the decision taken was improperly taken. The applicant has failed to make out a case for the relief sought in prayer 1 of his notice of motion i.e. That the suspension of the applicant's grant be declared unlawful and illegitimate.

Did the applicant prove that an oral agreement was entered into between him and the third respondent, and if so whether that agreement is binding on the board?

[48] This dispute can only be resolved by applying the well-known Plascon Evans⁵ principle applicable to motion proceedings namely by accepting the facts as alleged by the applicant which have been admitted by the respondent, together with the facts alleged by the respondent which cannot be disputed by the applicant.

⁵ *Plascon Evans Paints v Van Riebeeck Paints (Pty) Ltd* 1984 (3) A 623.

[49] The applicant, in support of his claim that a settlement agreement has been reached with third respondent attached a note he made in his diary, a “Change of Status” form; WhatsApp text messages and a bank statement. The note in his diary on 6 November 2019 reads as follows:

‘Reinstatement of my Grant: After long discussion we orally agreed and settled as follows: (a) Grant will be reinstated as of February 2019; (b) I will withdraw my Appeal; (c) Veterans claim against me withdrawn; (d) We should avoid taking each other to court; (e) I should go on the ground floor and complete a form “Change of Status” although it is not the correct form and attach to it (1) my bank statement (2) Association bank statements; and my certified ID and bring them to him thereafter. He will process them for payment.’

[50] The “Change of Status Form”, dated 6 November 2019, has the following handwritten note attached to it:

‘Mr Elago

As per settlement mutually, please enforce the agreement of dropping all information and I will as well withdraw my appeal in the process. My word. I appreciate this type of resolving issues. I expect payment by end of November 2019.’

[51] The following exchange of WhatsApp text messages between the applicant and the third respondent is recorded after the applicant enquired about the payment of his grant (the text is quoted verbatim):

‘Third Respondent: ‘Am advised that your case is with Veterans Appeal Board.’

Applicant: But we agreed the appeal will not proceed. How did it go there again? When is the appeal board sitting?

Third Respondent: Procedurally, your matter must be decided on, approved and then processed. If I just say I and Kamwi agreed is unprocedural!’

[52] Far from supporting the applicant’s version that there was an agreement, the latter text messages reflect the opposite. On a proper reading and analysis of the text messages exchanged between the applicant and the third respondent it appears that

there was no “meeting of the minds” as the third respondent clearly held the view that the applicant must follow the procedures? This message confirms the third respondent’s denial of the agreement as outlined by the applicant.

[53] Even in the event that I am wrong in concluding that no oral agreement was concluded, I am of the view that such an oral agreement would not be binding on the board. Section 7 of the Act stipulates that the affairs of the fund shall be managed and controlled by the board. This means that the board must act collectively. The board may delegate or assign power to a committee in terms of s 21 of the Act but it is not the applicant’s case that there was such delegation or assignment which empowered third respondent to enter into an agreement with the applicant. The third respondent would have no power to enter into such an agreement and it would have been *ultra vires* of the provisions of the enabling Act. Moreover, s 26 of the Act absolve the Fund, or, any member of the board, any member of a committee of the board, any staff member of the Ministry or any other person in respect of anything done or omitted to be done in the *bona fide* performance of any function or duty in terms of this Act.

Did the Appeal Board make a decision which is binding on the board?

[54] The applicant relies on the decision by the Appeal Board to prove that an oral agreement was indeed concluded. In particular he refers to the following part of the Appeal Board’s Order:

‘The Veterans Appeal Board further noted that the Oral Agreement which was entered into between himself and the Department, and this was also confirmed under Oath by Mr A M Kamwi.’

[55] It is common cause that the information concerning the conclusion of the oral agreement was conveyed to the Appeal Board by the applicant in his letter dated 17 June 2020 addressed to the Chairperson of the Appeal Board. All of the notes and letters, to my mind it amounts to self-corroboration which is inadmissible evidence. It

has no probative value and it is well established that a witness's previous statement(s) is insufficiently relevant in that it does not add anything to the value of his or her evidence.⁶

[56] In *Handl v Hand*,⁷ the court held when interpreting a judgment or order, regard should be had to the context within which the order had been made. I see no reason why this approach should not find application in the interpretation of the Appeal Board's ruling, being a tribunal established by the Act to deal with grievances against decisions of the board. It is clear from a reading of the "Ruling" that the Appeal Board did not consider the appeal as there was no "decision" made which it had to consider. Therefore the "noting" was made in the course of removing the appeal from the roll. This was made in passing and it has not probative value. The only substantive ruling or "order" made by the appeal board was the order made to remove the appeal from the roll and referring the matter to the board for its consideration.

[57] The applicant's attempt to elevate the Appeal Board's observation, made in passing, to a level of conclusive evidence for the existence of an oral agreement is with respect, misguided and this argument is therefore rejected.

Costs

[58] I reserved the issue of costs of the joinder application in the order issued consequent to the judgment delivered in respect thereof. I dismissed the application for joinder brought by the respondents and I can see no reason why the cost order should not follow suit. The applicant appears in person and his cost is therefore limited to disbursements incurred by the applicant in opposing the application for joinder. The application for joinder is interlocutory in nature and the costs therefore is limited in terms of rule 32(11).

⁶ Hoffman: *South African Law of Evidence* 2nd Edition at page 22.

⁷ *Handl v Handl* 2008 (2) NR 489 (SC).

[59] In respect of the costs of the main application, the respondents were successful in opposing the main application and the costs ought to follow the event.

[60] In the result the following order is made:

1. The applicant's application is dismissed with costs
2. The respondents are to pay the applicant's costs of the interlocutory application, which costs shall be limited to the disbursements incurred by the applicant and which costs is limited in terms of rule 32(11).
3. The applicant is to pay the respondents' costs of the main application.
4. The matter is removed from the roll and regarded as finalised.

M A TOMMASI

Judge

APPEARANCES

APPLICANT:

A Kamwi
3339 ROOS STREET
KHOMASDAL TEMPORARY RESIDENCE,
WINDHOEK, Namibia

RESPONDENTS:

A Makemba
Government - Office of the Government Attorney
WINDHOEK