

REPUBLIC OF NAMIBIA



HIGH COURT OF NAMIBIA MAIN DIVISION, WINDHOEK

Practice Directive 61

Case Title: Alex Kamwi Mabuku Kamwi and Veterans Board	Case No: HC-MD-CIV-MOT-GEN-2020/00522 (INT-HC-SECCOST-2023/00329)
	Division of Court: HIGH COURT(MAIN DIVISION)
Heard before: Tommasi, J	Date of hearing: 26 September 2023
	Date of order: 29 September 2023
Neutral citation: <i>Kamwi vs Veterans Board</i> (HC-MD-CIV-MOT-GEN-2020/00522) [2023] NAHCMD 604 (29 September 2023)	
Results on merits: No decision on the merits.	
The Order: <ol style="list-style-type: none">1. The application is granted and the appellant is released wholly from the obligation to provide security for costs.2. The court makes no order as to costs in respect of this application.3. The matter is finalised and removed from the roll.	
Reasons for orders:	

TOMMASI J:

[1] The applicant is a male registered member of the Veterans of the Liberation Struggle of Namibia Fund (the Fund) and a recipient of a monthly financial grant from the fund in terms of the Veterans Act 2 of 2008 (the Act). Furthermore, the applicant is a recipient of a pension grant from the Ministry of Gender and Poverty Eradication.

[2] The respondent is the Veterans Board (the Board) established in terms of s 14 of the Act.

[3] The applicant brought an application to this court with the following relief:

‘That the suspension of the applicant’s grant in the sum of N\$6 200 in the absence of the Veterans Affairs decision as also noted by the Veterans Appeal Board be declared unlawful and illegitimate;

That the oral agreement entered into between the 3rd 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.

That the 1st, 2nd and 3rd Respondents are held to be in breach of the Oral Agreement entered into on 6 November 2019;

That the 1st, 2nd, and 3rd Respondents are held to be in default of paying Applicant the sum of N\$ 117800.00 due for the months of 28 February 2019 as per Oral Agreement to September 2020;

That interest at 17% per month calculated monthly from 28 February 2019 up to September 2020 be charged on the amount due;

That the 1st, 2nd, and 3rd Respondents are interdicted from suspending any of the applicant’s subvention grant now and in future without due legal process;

Costs of suit the one paying the others to be absolved, only if opposed or unless paid on or

before 22December 2020.’

[4] The applicant filed an appeal in the Supreme Court on 17 July 2023 under case SA 70/2023 against the decision of the High Court, dated 7 July 2023. The application was dismissed and the decision is currently on appeal at the applicant’s insistence at the Supreme Court.

[5] The applicant applied to this court in terms of rule 65(5) of the High Court rules to be absolved from providing security for costs in the apex court. A notice of motion supported by an affidavit is filed of record.

[6] The essence of the applicant’s application is contained in subrule 14(2)(b) of the Supreme Court Rules, which provides as follows:

‘ If the execution of a judgment is suspended pending appeal, the appellant must, before lodging copies of the record, enter into good and sufficient security for the respondent’s costs of appeal, unless –

(a) ...

(b) the court appealed from, upon application of the appellant delivered within 15 days after delivery of the appellant’s notice of appeal or such longer period as that court on good cause shown, has allowed the appellant to be released wholly or partially from that obligation.’

[7] The High Court judgment was delivered on 7 July 2023 and notice of appeal was filed at the Supreme Court on 17 July 2023. The application to be absolved from providing security for costs was filed on ejustice on 21 August 2023. The applicable rule provides for 15 days within which the application must be brought. The exception is that the applicant must show good cause with a condonation application. Thus the application is out of time with eight days.

[8] The hearing of the application was scheduled for 26 September 2023 at 09h00. The applicant was unable to attend and requested the respondent’s counsel Mr Khupe to enlighten the court that he is medically unfit to attend the hearing. Mr Khupe indicated that he would not oppose the application and that the court may consider the application on the papers before it and grant same if the court is satisfied that a case has been made out.

[9] The applicant deposed to an affidavit in which his financial status was exposed. Therein he stated that he receives a monthly subversion grant amounting to N\$6 200 from the Ministry of Defence and Veterans Affairs (the MDVA). In addition, as a pensioner the applicant receives a monthly pension grant from the Ministry of Gender and Poverty Eradication amounting to N\$1 400. The applicant further prays that he engaged the respondent's counsel in terms of rule 14(2)(a) of the Supreme Court Rules to no avail.

[10] The court is satisfied that the applicant has made out a case to be released wholly from providing security for costs. The court considered the fact that the respondent is not insisting on security for costs and the applicant's claims of being an indigent and exercises its discretion to grant to application.

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

1. The application is granted and the appellant is released wholly from the obligation to provide security for costs.
2. The court makes no order as to costs in respect of this application.
3. The matter is finalised and removed from the roll.

Judge's signature	Note to the parties:
	Not applicable
Counsel:	
Applicant	Respondent
AKM Kamwi 3339 Roos Street (Khomasdal) Windhoek	MC Khupe Of Office of the Government Attorney Windhoek