

**REPUBLIC OF NAMIBIA**



**HIGH COURT OF NAMIBIA MAIN DIVISION, WINDHOEK**

**JUDGMENT**

Case No: HC-MD-CIV-MOT-GEN-2023/00033

In the matter between:

**JULIA NAMBINGA**

**1<sup>st</sup> APPLICANT**

**JJJ TRANSPORT CC**

**2<sup>nd</sup> APPLICANT**

and

**LOIDE TASHIYA SHAANIKA**

**1<sup>st</sup> RESPONDENT**

**ONIIPA TOWN COUNCIL**

**2<sup>nd</sup> RESPONDENT**

**ONDONGA TRADITIONAL AUTHORITY**

**3<sup>rd</sup> RESPONDENT**

**OSHIKOTO COMMUNAL LAND BOARD**

**4<sup>th</sup> RESPONDENT**

**Neutral citation:** *Nambinga v Shaanika* (HC-MD-CIV-MOT-GEN-2023/00033)  
[2024] NAHCMD 177 (18 April 2024)

**Coram:** USIKU J

**Heard:** 20 November 2023

**Delivered:** 18 April 2024

**Flynote:** Applications and motions – Declaratory relief – Applicants having not established entitlement to the relief they seek – Application dismissed.

**Summary:** During or about September 2017, the second applicant, and the first respondent entered into a settlement agreement. The first applicant holds 50%

members interest in the second applicant. In terms of the settlement agreement, the parties agreed that the second applicant would continue to occupy the portion of land that forms the subject of this matter, at the fixed rental of N\$9500 per month, commencing on 1 October 2017, subject to an annual increment of 10%, effective 1 October 2018. The settlement agreement was entered into subject to the determination of ownership of the immovable property by the second respondent. The lease agreement would endure until the final determination of ownership of the land. In case of any judicial process in relation to the allocation, then at the finalisation of such proceedings.

On 4 January 2018, the second respondent informed the parties that they have resolved to leave the issue of ownership of the land up to the parties' legal representatives. The current dispute between the second applicant and the first respondent relates to a property known as Portion 1 ('the property'), which has a temporary number allocated to it by the second respondent, namely number I-1052, falling under the area of Oniipa Town. The applicants approach this court seeking a declaratory order to declare that a customary land right in respect of the property was, on 15 May 2003, allocated to the first applicant by the third respondent in terms of s 20(b) of the Communal Land Reform Act 5 of 2002. In support of their claim, the applicants produced a letter authored by a certain Mr Amoomo, purportedly allocating customary land rights to the first applicant. The first respondent opposes the matter.

*Held that*, the letter relied upon by the first applicant does not confer any right upon her as regards the immovable property. The applicants application is therefore dismissed.

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### **ORDER**

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1. The applicants' application is dismissed.
  2. The applicants are ordered to pay, jointly and severally, the one paying the other to be absolved, the costs of the first respondent.
  3. The matter is removed from the roll and is regarded finalised.
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## JUDGMENT

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USIKU J:

### Introduction

[1] This is an opposed application brought by the applicants seeking an order declaring that a customary land right in respect of the immovable property known as Portion 1 with temporary number I-1052 within the area falling under the Oniipa Town Council ('the property') was, on 15 May 2003, allocated to the first applicant by the third respondent in terms of s 20(b) of the Communal Land Reform Act 5 of 2002. The applicants further seek costs of suit including costs of one instructing and one instructed Counsel.

### The parties

[2] The first applicant is Julia Nambinga, a major businesswoman.

[3] The second applicant is JJJ Transport CC, a close corporation registered as such in terms of the laws of Namibia.

[4] The first respondent is Loide Tashiya Shaanika, a major female teacher currently employed by Oranjemund Primary School. The first respondent is the Executrix of the late estate of Eskon Kwathandje Shaanika.

[5] The second respondent is Oniipa Town Council, a duly elected and constituted Town Council in terms of s 6 of the Local Authorities Act 23 of 1992 ('the Act'). The second respondent does not oppose the application.

[6] The third respondent is Ondonga Traditional Authority, a duly established traditional authority in terms of s 2(1) of the Traditional Authorities Act 25 of 2000.

[7] The fourth respondent is Oshikoto Communal Land Board, duly established in terms of s 2 of the Communal Land Reform Act 5 of 2002.

[8] The applicants are represented by Mr Chibwana on instructions of Dr. Weder, Kauta and Hoveka Inc, whereas the first respondent is represented by Mr Nangolo.

### Background

[9] As a point of departure, it should be noted that the parties are no strangers to each other and in fact, share a long standing history. It is common cause that during 2015, the applicants instituted action against the first respondent, under case number I 1707/2015 ('the first matter'). During 2016, the first respondent also instituted action against the applicants under case number I 46/2016 ('the second matter'). On 22 May 2017, the first and second matters were consolidated under case number I 1707/2015.

[10] The parties settled the first matter on 19 September 2017, prior to commencement of trial in the second matter.

[11] The second matter proceeded to trial before Oosthuizen J, on 19 and 20 September 2017. After commencement of the trial however, the parties concluded a settlement agreement which was subsequently made an order of this court. On 19 April 2021, the first respondent instituted action against the second applicant premised on the aforesaid settlement agreement. In terms of the agreement, the second applicant was to continue occupying both Portions 1 and 2 under temporary numbers I 1052 and I 1054 at a fixed rental amount of N\$9 500 per month commencing on 1 October 2017. Such rental shall increase by 10% annually with effect from 1 October 2018.<sup>1</sup>

[12] It was the first respondent's case that the second applicant, despite continuing to occupy the premises concerned, breached the agreement by failing to pay rental provided for under clause 7 with effect from 1 May 2018 to the date of issuing of summons. The court, among other things, found in favour of the first respondent and held that the second applicant remained obliged to make payment of the agreed rental amount in terms of the settlement agreement, for both portions to the plaintiff.<sup>2</sup>

<sup>1</sup> Clause 7 of the settlement agreement.

<sup>2</sup> *Shaanika v JJJ Transport CC* (HC-MD-CIV-ACT-CON-2021/01565) [2022] NAHCMD 688 (16 December 2022) at 65.

Dissatisfied with the outcome, the second applicant appealed and the matter is currently pending in the Supreme Court.

[13] Subsequent to lodging the appeal, the applicants approached this court seeking the following relief:

'1 TAKE NOTICE that the first and second applicants intend to make application to this Court for an order in the following terms:

2 It is declared that a customary land right in respect of the immovable property known as Portion 1 with temporary number I-1052 within the area falling under the Oniipa Town Council was allocated on 15 May 2003 to the First Applicant by the second respondent in terms of section 20 (b) of the Communal Land Reform Act 5 of 2002.

3 Further and or alternative relief.

4 Costs of suit in respect of one instructing and one instructed Counsel.'

[14] It appears that the reference to the 'second respondent' in para 2 of the applicants' relief is a typographical error, and that the applicants intended to refer to the 'third respondent'.

#### Applicants' case

[15] The first applicant deposes to the applicants' founding affidavit. She avers that during or about September 2017, a settlement agreement was entered into between the second applicant, and the first respondent. The first applicant holds 50% members interest in the second applicant. According to the first applicant, the current dispute between the second applicant and the first respondent relates to a property known as Portion 1 ('the property'), which has a temporary number allocated to it by the second respondent, namely number 1-1052 within the area falling under Oniipa Town.

[16] In terms of the settlement agreement, avers the first applicant, the parties agreed that the second respondent would determine the ownership of the property. This was on the mutual understanding that the property was within the area falling under Oniipa Town Council.

[17] It is the first applicant's assertion that she is aware that the parties approached the second respondent seeking a determination of the dispute as required by clause

11 of the settlement agreement and that the second respondent on 4 January 2018 made a decision which was communicated to the first applicant in writing. The letter provides as follows:

'We hereby would like to inform you that your item has been tabled to the Management Committee and the Council meeting which was held on the 11 October 2018. The subject matter was resolved under the Council Resolution No. OTC/11/10/2018-2 below are the recommendations brought forth:

- That Council leaves it up to your lawyers (your legal representatives) to take care of this issue.
- Furthermore, kindly note that this transaction took place before the proclamation of Oniipa town, therefore, it is up to the law to make a decision.'

[18] The dispute, according to the first applicant, is whether the third respondent allocated a customary land right in terms of s 20(b) of the Communal Land Reform Act in respect of the property either to the first applicant or the Late Eskon Kwathandje Shaanika. The dispute in relation to the rights and interest in the property arose at a time when the property was communal land and had not yet been declared a settlement as contemplated by the Regional Councillors Act 22 of 1992 and before the land became townlands as contemplated by the Local Authorities Act 23 of 1992. The second respondent aptly captured this fact in its decision. The Late Eskon Kwathandje Shaanika is the first applicant's eldest son.

[19] The first applicant further avers that the deceased, her sister Johanna Nambinga, the deceased's daughter Johanna Shaanika and the first applicant, have been conducting and carrying on business in the name of the second applicant. Further, the second applicant was formerly registered on 4 June 2010, operating as JJJ Transport CC with the following members:

Julia Nambinga - 50%

Eskon Shaanika - 10%

Johanna Nambinga - 20%

Johanna Shannika - 20%

[20] The first applicant gives a brief background as to how the business (the second applicant) came into existence. During the year 2002, the deceased returned from his work in Okahandja, where he was working at a garage as a handy man/mechanic. He came with a business idea and approached Ms. Johanna Nambinga, the first applicant's sister, who was a teacher, to assist him with setting up a business. Ms Johanna Nambinga is currently a 20% shareholder in the second applicant. The first applicant confirms that Ms Johanna Nambinga, in her attempt to assist the deceased in furthering his business idea, approached the family and suggested that the deceased be granted the financial assistance that he required. As a family, it was agreed that the first applicant would sell some of her cattle in order to put up the business, since the deceased's business idea was viable. Such cattle were sold to a certain Mr Sony of Ombiliha Meat Market in Ondangwa. The proceeds were then used to purchase the property.

[21] According to the first applicant, on or about 15 May 2003, she and her now late uncle, Mr Asser Nuuyoma, approached Michael Amoomo, the Headman of Onguta Village, where the immovable property is located. The first applicant informed Mr Amoomo, who is allegedly a Headman under the third respondent, that she required a piece of land. Mr Amoomo then allocated a piece of land which formed part of his mahungu field to the first applicant and she paid the sum of N\$600 to him. The first applicant avers that she is aware that Mr Amoomo was inaugurated as a traditional councillor in terms of the Traditional Authorities Act by the late king of the third respondent and was the duly authorised representative on 15 May 2003 for the third respondent, responsible for allocating customary land rights in respect of communal land as contemplated by s 20(b) of the Communal Land Reform Act. It is therefore her submission that as a result of the allocation of the land to the first applicant by Mr Amoomo, acting in his capacity as a traditional councillor for and on behalf of the Ondonga Traditional Authority and its king, in terms of s 20(b) of the Communal Land Reform Act, the first applicant obtained a customary land right over the property on 15 May 2003.

[22] The first applicant avers that neither herself nor the Late Eskon Kwathandje Shaanika or the widow of the Late Eskon Kwathandje Shaanika, the first respondent in this matter, approached the Communal Land Board in terms of the Communal Land Reform Act 5 of 2002 for a ratification of the customary land right.

[23] As far as why the declaratory order is sought in this court is concerned, the first applicant asserts that it is common cause that the property that is the subject of the dispute between the parties is no longer communal land and as a result does not fall under the jurisdiction of the Communal Land Board and the Ondonga Traditional Authority. The first applicant asserts further that she is aware that the land was gazetted in terms of s 31(1) of the Regional Councils Act as a settlement area. The land then fell under the Oshikoto Regional Council and any rights to that land had to be allocated by the Oshikoto Regional Council in compliance with the provisions of s 28(1)(i) of the Regional Councils Act.

[24] The first applicant submits that the property could only be allocated by the Oshikoto Regional Council with the written approval of the Minister of Urban and Rural Development. The only other circumstance was that the Oshikoto Regional Council could endorse the allocation made by the Ondonga Traditional Authority in terms of the Communal Land Reform Act. The first applicant avers that she is aware that the Minister of Urban and Rural Development has not provided a written approval for the land to be allocated to the first respondent.

[25] The land, according to the first applicant, was subsequently declared to be a town under the name Oniipa town by the Minister of Urban and Rural Development by the Notice in the Gazette. This declaration was made in terms of s 3 (1) of the Local Authorities Act. The result was that second respondent became responsible for allocating the land in question as the land now fell under its jurisdiction. The second respondent could only allocate the land in question with the prior written approval of the Minister of Urban and Rural Development in terms of s 30(1)(t)(iii) as read with s 63(1) and (2) of the Local Authorities Act.

[26] It is the first applicant's assertion further that the second applicant and first respondent labored under the impression that the second respondent would resolve their dispute regarding the property at the time of concluding the settlement agreement. The second applicant and the first respondent when preparing the settlement agreement worked with the knowledge of the declaration of Oniipa Town when they entered into the agreement in the belief that the second respondent would resolve the dispute. The first applicant submits that had there not been any gazetting



of a settlement area in terms of the Regional Councils Act and thereafter the proclamation of Oniipa Town, the appropriate body to determine the dispute would have been the Communal Land Board.

[27] The first applicant submits further that in terms of s 28(9)(a) of the Communal Land Reform Act, where there are conflicting claims in respect of communal land, the Communal Land Board is authorised to determine the dispute in relation to the rights and interest in communal land and may in terms of s 28(10) of the Communal Land Reform Act grant the relief specified in favour of the party that is successful. It is her further submission that the first respondent has not been reallocated the land in terms of s 26(2) of the Communal Land Reform Act and in any event could never be reallocated that land because the property was never owned by the Late Eskon Kwathandje Shaanika.

[28] In the circumstances, according to the first applicant, the appropriate forum to determine who, between the first applicant and the Late Eskon Kwathandje Shaanika, was the recipient of the property, is this court. The first applicant submits that this court by virtue of its original jurisdiction, has the jurisdiction to hear and adjudicate the civil dispute between the applicants and the first respondent in relation to the rights in the property in question. The first applicant therefore seeks a declarator, declaring that a customary land right was allocated to her by the third respondent on 15 May 2003 in terms of s 20(b) of the Traditional Authorities Act and prays that the application be granted with costs, including costs of one instructing and one instructed counsel.

#### First respondent's case

[29] In her answering affidavit, the first respondent avers that there are several legal problems and obstacles to the relief being granted as a matter of law, these are summed up as follows:

(a) First, on the basis of once-and-for-all rule, the applicants ought to have instituted this action with the action they brought before Oosthuizen J, in which action a settlement agreement was reached. It follows that the applicants are precluded from instituting this case on the basis of once-an-for-all rule;

(b) Second, the issues raised are *res judicata* in respect of the matter that was already heard before Oosthuizen J under Case Numbers I1707/2015 and I 46/2016 and the matter pending in the Supreme Court which was heard by Sibeya J under Case Number HC-MD-CIV-ACT-CON-2021/01565 and against which the first applicant filed an appeal. It follows from the above that the applicants are precluded from bringing this action both on the basis of *res judicata* and *lis pendens*.

(c) Third, the order is legally incompetent. The 'second respondent' does not allocate customary land rights under s 20 of the Communal Land Reform Act. On that basis alone, the order is incompetent. Further, section 20(b) of the Communal Land Reform Act is a conditional provision which is only applicable if the Chief 'determines' that a Traditional Authority could allocate customary land rights. The primary party that allocates customary land rights is the Chief of the Traditional community under s 20(a) of the Communal Land Reform Act. The applicants were thus, required to allege and prove such a determination under section 20(b) of the Communal Land Reform Act. They did not. Accordingly, the order is incompetent when regard is had to the scheme and structure of s 20 of the Communal Land Reform Act and on the basis that the 'second respondent' is neither a Chief of a Traditional Authority nor is it a Traditional Authority. The Traditional Authority only does so if the Chief so determines.

(d) Fourth, the 'second respondent' could not have granted customary land rights to the applicants (assuming it could, for it was not in existence in 2003).

(e) Fifth, the applicants, given the background and history on this matter, have unreasonably delayed bringing this application to the prejudice of the respondents. On this basis alone, the application must be dismissed.

[30] Having stated the aforesaid, the first respondent briefly proceeded to respond to the first applicant's founding affidavit.

[31] According to the first respondent, the settlement agreement referred to remains operative. The conditions stated in the settlement agreement have not been fulfilled and the parties remain awaiting the decision and determination of the second

respondent as found by Sibeya J. The second respondent has not made a determination contemplated in the settlement agreement and this issue is pending in the Supreme Court.

[32] The first respondent contends that there was no allocation made to any of the applicants in terms of the Communal Land Reform Act. This explains why the Applicants could not prove it and produce it in this application or in the prior proceedings before Oosthuizen J and Sibeya J. It is the first respondent's contention that her late husband, at all relevant times, conducted business at the plot concerned and was the party that was permitted by the Traditional Authority and later by the second respondent to conduct business on those premises. He, and his estate, after his death, had therefore, at all relevant times, been the lawful occupiers of the land concerned. Hence, the parties await the second respondent's determination and allocation of the property in accordance with the Local Authorities Act, No. 23 of 1992. The Traditional Authority has no right to allocate this land after the proclamation of the second respondent as a Town Council.

[33] As a matter of law, according to the first respondent, the declarator cannot be granted. There is in any event, a fatal and material mismatch between the allegations in the founding affidavit and the declarator sought in the notice of motion. The first respondent contends that the case she had to meet is that of allegations that there was an allocation by the 'second respondent' to the first applicant during 2003. That is the relief that the applicants are seeking. This relief however, is contradicted by the allegations made in the founding affidavit and this mismatch spells the destruction of the applicants' case. The first respondent therefore, seek an order dismissing the applicants' application with costs.

[34] In reply, the first applicant gives a brief account of the litigation history between the parties and contends that the points of law raised by the first respondent are not sustainable. She denies that Sibeya J made any finding that the land ownership dispute would be resolved at a future date by the second respondent. The first applicant reiterates that there was an allocation of customary land rights made to her in terms of the Communal Land Reform Act and denies that the first respondent's late husband received any permission by the Local Authority and later by the second respondent to conduct business at the property.

## Analysis

[35] The following issues are common cause between the parties:

(i) That case numbers I1707/2015 and I46/2016 were settled by way of a settlement agreement.

(ii) That His Lordship Justice Sibeya delivered judgment under case number HC-MD-CIV-ACT-CON-2021/01565 that is the subject of an appeal to the Supreme Court.

(iii) That the second respondent wrote a letter dated 04 January 2018.

(iv) That there is a dispute in relation to the ownership of the immovable property known as Portion 1 with temporary number I – 1052 within the area falling under the Oniipa Town Council between the First and Second Applicant and the First Respondent.'

[36] The following disputes exist between the parties:

(i) Whether the third respondent could in terms of section 20 (b) of the Communal Land Reform Act 5 of 2002 allocate a customary land right.

(ii) Whether on 15 May 2002 the first applicant was allocated a customary land right by the second respondent represented by Mr Michael Amoomo.

(iii) Whether the settlement agreement resolved with finality the dispute related to the ownership of the immovable property known as Portion 1 with temporary number I – 1052 within the area falling under the Oniipa Town Council.

(iv) Whether the once and for all rule finds application in the present matter.

(v) Whether the present application is *res judicata* in that the issue adjudicated and determined under case numbers I 1707/2015, I 46/2016 and HC-MD-CIV-ACT-CON-2021/01565.

(vi) Whether the order sought by the applicants is legally competent.

(vii) Whether the applicants have unreasonably delayed in bringing the present application and prejudiced the first respondent.

(viii) Whether of not the applicant is entitled in law and facts to the relief sought?

(ix) Whether the first respondent raises a dispute in her answering affidavit with regards to whether the settlement agreement is operative.'

[37] I shall sum up the above disputes into the following legal issue: Are the applicants entitled to the declaratory order they seek?

[38] As a point of departure, I will deal with the points of law raised by the first respondent as these will determine whether or not the matter will proceed or if it will

stop in its tracks. I shall deal with the issue of once and for all rule, *res judicata* and *lis pendens* together. This court, in *Somaeb v Standard Bank (Pty) Ltd* (HC-MD-CIV-MOT-GEN-2017/00443) [2018] NAHCMD 406 (14 December 2018), re-emphasised the principles relating to the plea *alibi pendens* and *res judicata* as dealt with in *Okorusu Fluorspar (Pty) Ltd v Tanaka Trading CC*,<sup>3</sup>. In doing so, the court placed reliance on *Evins Shield Insurance Co Ltd*,<sup>4</sup> where Corbett J.A. stated as follows:

‘The object of this principle (*res judicata*) is to prevent repetition of lawsuits, the harassment of a defendant by a multiplicity of actions and the possibility of conflicting decisions . . . The principle of *res judicata*, taken together with the “once and for all” rule, means that a claimant for Aquilian damages who has litigated finally is precluded from subsequently claiming from the same defendant upon the same cause of action additional damages in respect of further loss suffered by him. The claimant must sue for all his damages, accrued and prospective, arising from one cause of action, in one action and, once that action has been pursued to final judgment that is the end of the matter.’

[39] From the above, it is evident that the once and for all rule requires that all claims generated by the same cause of action should be instituted in one action. I am not convinced that the applicants finally litigated the previous matters that appeared before this court. The relief currently sought is as a result of the settlement agreement signed between parties that left the issue of declaration of ownership of the property at the behest of the second respondent. Further, upon careful perusal of the previous matters lodged by parties before this court, including the pending Supreme Court appeal, it is evident that there has been no actual decision in litigation between these parties regarding the issue involved in the present case. For this reason, the points of law in as far as they relate to ‘the once and for all rule’, *res judicata* and *lis pendens* stand to be dismissed.

[40] I shall now consider the third point of law. According to the second respondent, the declaratory order sought is legally incompetent. The ‘second respondent’ does not allocate customary land under s 20 of the Communal Land Reform Act. Further, s 20(b) of the Communal Land Reform Act is a conditional provision which is only applicable if the Chief ‘determines’ that a Traditional Authority

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<sup>3</sup> *Okorusu Fluorspar (Pty) Ltd v Tanaka Trading CC* 2016 (2) NR 468 (HC) at 497.

<sup>4</sup> *Evins Shield Insurance Co Ltd* 1980 (2) SA 814 (A) at 836G-836A.

could allocate customary land rights. There is no such determination by the Chief and on that basis alone, the order is incompetent.

[41] Section 20 of the Communal Land Reform Act provides as follows:

‘Subject to the provisions of this Act, the primary power to allocate or cancel any customary land right in respect of any portion of land in the communal area of a traditional community vests - (a) in the Chief of that traditional community; or (b) where the Chief so determines, in the Traditional Authority of that traditional community.’

[42] According to the first applicant, on or about 15 May 2003, her and her now late uncle, Mr Asser Nuuyoma, approached a certain Mr Michael Amoomo, the Headman of Onguta Village, where the property is located. Mr Amoomo, whom the first applicant avers was inaugurated as a Traditional Councillor in terms of the Traditional Authorities Act by the late king of the third respondent and was the duly authorised representative on 15 May 2003 for the third respondent, responsible for allocating customary land rights in respect of communal land as contemplated by s 20(b) of the Communal Land Reform Act, allocated a piece of land which formed part of his mahungu field to the first applicant and she paid the sum of N\$600 to him. It is therefore her submission that as a result of the allocation of the land by Mr Amoomo, acting in his capacity as a traditional councillor for and on behalf of the Ondonga Traditional Authority and its king, in terms of s 20(b) of the Communal Land Reform Act, the first applicant obtained a customary land right over the property on 15 May 2003. The first applicant relies on an annexure attached to the founding affidavit and marked as “JN3A” as proof of Mr Amoomo, in his capacity as headman of the Ondonga Traditional Authority, allocating the property and the rights and interest thereon to herself.

[43] Annexure “JN3A” is written in the Oshiwambo language, however, a sworn translation thereof is attached as “JN3B”. The said annexure provides as follows:

‘Portion 1

linongo  
Onguta  
15 May 2003

I, Mikael Amoomo do hereby issue this letter to Ms. Nambinga Julia, ID no, 49100310050 as a certificate of rights to be a member of linoongo village. I noted that there is no act of deceitfulness in her of owning a garage business of fixing trucks.

Hence, I feel happy because she is assisting the nation. I regard her that she has decided to be under my leadership in linongo.

This letter serves as evidence to Ms Nambinga Julia. Julia is from Omusati Region. In the conversation with her there is no act of deceitfulness as I stated earlier.

Ms Julia will not be the one in charge of the garage; he assigned his son, Eskon Shaanika. Eskon Shaanika is a son of Ms. Julia Nambinga.

Let me end this letter here in confidence.

Mikael Amoomo, 44032000174'

[44] Upon careful consideration of the above letter, I am not convinced that it confers any rights in respect of the property to the first applicant as contended for by the applicants. The letter does not purport to allocate and does not allocate any customary land rights. Further, this letter does not advance the applicants' case in any way. In the light of the above, I am persuaded that the first respondent's third point of law is sound and I accordingly uphold same. In other words, I am of the view that, on the facts of the present case, the applicants has not established entitlement to the relief they seek. Having reached this conclusion, I do not deem it necessary to deal with other issues raised by the first respondent. The applicants' application therefore stands to be dismissed.

[45] As regards the issue of costs, the general rule is that the successful party is entitled to costs. There is no reason to deprive the first respondent, who is successful in this matter, of her costs. I shall therefore grant an order to that effect.

[46] In the result, I make the following order:

1. The applicants' application is dismissed.
2. The applicants are ordered to pay, jointly and severally, the one paying the other to be absolved, the costs of the first respondent.

3. The matter is removed from the roll and is regarded finalised.

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B USIKU  
Judge

#### APPEARANCES

Applicants: T Chibwana  
On instructions of Dr Weder, Kauta and Hoveka Inc.

1<sup>st</sup> Respondent: E Nangolo  
Of Sisa Namandje & Company, Windhoek

2<sup>nd</sup> Respondent: No appearance

3<sup>rd</sup> Respondent: No appearance

4<sup>th</sup> Respondent: No appearance