



IN THE HIGH COURT OF NAMIBIA, NORTHERN LOCAL DIVISION

REASONS

CASE NO. A 04/2012

In the matter between:

TUYENIKELAO ERASTUS

APPLICANT

and

THE MINISTRY OF LANDS AND RESETTLEMENT

FIRST RESPONDENT

**CHAIRPERSON: OHANGWENA COMMUNAL LAND
BOARD**

SECOND RESPONDENT

Neutral citation: *Erasmus v Minister of Lands and Resettlement* (I 04/2012) [2013]
NAHCNLD 21 (18 April 2013)

Coram: DAMASEB, JP

Heard: 18 April 2013

Delivered: 19 April 2013

REASONS

DAMASEB, JP:

[1] On 18 April 2013 the applicant's counsel, Ms Indongo, sought an order in the following terms:

- 'a) Holding the respondents in contempt of court;
- b) Further and /or alternative relief.'

[2] I refused to grant the relief sought, removed the matter from the roll and informed counsel for the applicant that the matter has been finalised, meaning that it will no longer come on the court's case management roll. I now provide my reasons for doing so. The applicant sought the committal for contempt of the second respondent for his alleged failure to comply with the court's order dated 5 September 2012, which was made by agreement between the parties to give effect to their settlement agreement, which states as follows:

'1.1 That the matter be settled on the following terms and conditions:

- a) the Appeal Tribunal¹ appointed in terms of section 39 of the Communal Land Reform Act 5 of 2002, be directed within 30 days of signing of this agreement, to supply to the Applicant, a full copy of the appeal record;
- b) the Appeal Tribunal shall, within 60 days, from date of this agreement, make a decision in relation to the appeal lodged by the Applicant save where the parties otherwise agree in writing;
- c) that , within 15 days of receipt of the record, the Applicant be afforded an opportunity to file any further papers with the Appeal Tribunal as it may deem necessary save where the parties otherwise agree in writing on the extension of time.'

[3] As is apparent, the party who, in terms of the agreement between the parties, had to provide the record is the 'Appeal Tribunal'. Yet the applicant seeks a contempt conviction against the second respondent, who is the Chairman of the Communal Land Board. The relief sought was therefore clearly untenable. On that ground alone, it stood

¹ The Appeal Tribunal is a body separate from the Communal Land Board: see ss 2 and 39 of the Communal Land Reform Act, 2002 (Act 5 of 2002).

to be dismissed. Besides, the so-called application seeking a contempt conviction against the second respondent is not supported by any evidence on affidavit setting out the necessary averments in support thereof. The affidavit relied on, of January 2013, was in support of the application to compel the production of the record of proceedings. On that basis too, the relief sought was incompetent.

[4] The party who seeks to enforce a court order through committal proceedings bears the *onus* and must allege and prove the grounds of contempt², which are

- (a) the existence of an order;
- (b) service of the order on the party in default; and
- (c) proof that the respondent willfully failed to comply with the order.

It bears mention that the proof required is willful or reckless disregard of the order. Unreasonable but bona fide non-compliance does not constitute contempt. There is no admissible evidence before me by way of affidavit setting out any fact supporting a finding of guilt for contempt based on the requirements set out above.

[5] It was for these reasons that I refused to grant the relief sought by the applicant and, as I should have done, struck (not remove) the matter from the court's roll.

P T Damaseb

Judge-President

² /AE//ams Data (Pty) Ltd and others v St Sebata Municipal Solutions (Pty) Ltd and others 2011 (1) NR 247 (HC) at para 33.

APPEARANCE

FOR THE APPLICANT

E N INDONGO

Of Shakumu & Associates, Oshakati