

REPUBLIC OF NAMIBIA



**HIGH COURT OF NAMIBIA NORTHERN LOCAL DIVISION
HELD AT OSHAKATI**

JUDGMENT

Case No: HC-NLD-CIV-MOT-GEN-2018/00015

In the matter between:

GIVEN KOMPELI AKATAMA

APPLICANT

and

**MUYEGHU MUYEGHU
OFFICE OF THE JUDICIARY
MINISTER OF JUSTICE**

**FIRST RESPONDENT
SECOND RESPONDENT
THIRD RESPONDENT**

Neutral citation: *Akatama vs Muyeghu* (HC-NLD-CIV-MOT-GEN-2018/00015)
[2019] NAHCNLD 57 (3 June 2019)

Coram: CHEDA J
Heard: 30 April 2019
Delivered: 3 June 2019

Flynote: Application to have a warrant of committal declared null and void-application cannot succeed as there is no defect in said warrant – the definition of legal terms vague and embarrassing defined.

Summary: The Applicant launched an urgent application to be released from prison with immediate effect, particularly on case number A 419 – 2015. The basis for the said application is that the warrant of committal is defective, vague and embarrassing. He also applied for a condonation for non-compliance with the rules of court.

Held: that there is no defect with the warrant of committal and application was dismissed.

Held: a warrant of committal is not a document subject to the provisions of the Stamp Duty Act 15 of 1993.

Held further: that the terms vague and embarrassing is improperly used.

ORDER

1. The application to have applicant immediately released due to a defective warrant of committal is dismissed; and
2. No order as to costs.

JUDGMENT

CHEDA, J:

[1] This court is faced with an application, in which the applicant is challenging the validity of a warrant of committal and requests that the court should order his immediate release from the Oluno Correctional Facility.

[2] The applicant is currently incarcerated at the Oluno Correctional Facility. The first respondent is Mr Muyeghu, the trial magistrate at Katima Mulilo, the second respondent is the office of the Judiciary and the third respondent is the Ministry of justice all of them are cited in their official capacities.

[3] The applicant who is a self-actor, launched this application on an urgent basis on 29 November 2018, but was, however, not heard on an urgent basis. This application was served on the Office of the Government Attorney on 31 January 2019 and was scheduled to be heard on 11 March 2019.

[4] On 11 March 2019, the applicant appeared to argue his application, but, there was no representation from the office of the Government Attorneys for the three respondents. The matter was then postponed to 30 April 2019 to give an opportunity to the Government Attorneys to indicate whether they wished to oppose the application or not. However, no such indication was made.

[5] On 30 April 2019 the applicant moved that his application proceed as an unopposed and it proceeded accordingly.

[6] Applicant's relief was couched as follows:

- '1. An order of (sic) to condone my non-compliance with the rules of this court.
2. An order for the applicant to be released from prison with immediate effect, particularly on case number A 419 - 2015; for (sic) reason that the warrant of committal is defective, vague and embarrassment (sic).
3. costs of suits' (sic)

[7] Since the matter was not heard on an urgent basis, the first prayer of his notice of motion need not be adjudicated upon, as the matter proceeded in the normal course and applicant complied fully with the rules of court.

[8] At the onset it is important to state that a warrant of committal is not one of the documents subject to the Stamp Duties Act 15 of 1993 [hereinafter referred to as “the Act”]., as it falls under the general exceptions of which; section 4 of the said Act, read thus:

‘4. (1) Duty shall not be chargeable in respect of . . .

(a) . . .

(b) . . .

(c) any instrument used or intended for use in or in connection with criminal proceedings, or in connection with any charge of a criminal offence, or in connection with bail.’

[9] I perused the warrant of committal which was annexed to this application as “Annexure A-2.” I find that there is no defect, as the form is accurately completed, the conviction is fully described and the date of conviction is clear. In addition, thereto the signature and the magistrates date stamp is legible. It is not clear why applicant termed this warrant of committal defective, vague and embarrassing.

[10] Applicant averred that the warrant of committal is vague and embarrassing. I think it is important to deal with this term effectively, which the unrepresented applicant needs to understand. This is a legal phrase which is used when a pleading is either meaningless or is capable of more than one meaning. It is said to be embarrassing if it cannot be understood what grounds are being relied upon. In other words, the said pleading will be unintelligible, ambiguous, vague or too general so as to embarrass the opposite party who is in the dark as to know the allegations against him/her. It is not the case in the present circumstances. The simple definition was clearly laid down in *Trope v South Africa Reserve Bank* 1992 (3) SA 208 at 211B-E where McCreath J ably stated:

‘An exception to a pleading on the ground that it is vague and embarrassing involves a two-fold consideration. The first is whether the pleading lacks particularity to the extent that it is vague. The second is whether the vagueness causes embarrassment of such a nature that the excipient is prejudiced (*Quinlan v MacGregor* 1960 (4) SA 383 (D) at 393E-H). As to whether there is prejudice, the ability of the excipient to produce an exception-proof plea is

not the only, nor indeed the most important, test – see the remarks of *Conradie J* in *Levitan v Newhaven Holiday Enterprises CC* 1991 (2) SA 297 (C) at 298G-H. If that were the only test, the object of pleadings to enable parties to come to trial prepared to meet each other's case and not be taken by surprise may well be defeated. . . . It follows that averments in the pleading which are contradictory and which are not pleaded in the alternative are patently vague and embarrassing; one can but be left guessing as to the actual meaning (if any) conveyed by the pleading.'

[11] In light of the above it is clear therefore that applicant's use of the above terms is misplaced and it finds no place in these proceedings.

[12] The Applicant further stated in his submission that the signature on the warrant of committal might not be that of the magistrate. However, there is no reason and/or evidence before this court to justify his assertion. In the absence of such evidence the authenticity of the said signature cannot be successfully challenged. The common legal principle that he who alleges must prove should apply to this matter, which applicant has failed to do.

[13] I, therefore, find that applicant has not discharged his onus of proving that the warrant of committal is fatally defective to justify its nullity which will then result in his immediate release. His averments are, therefore, without merit and are rejected in their entirety.

[14] It is ordered that:

1. The application to have the applicant released due to a defective warrant of committal is dismissed; and
2. No order as to costs.

M Cheda

Judge

APPEARANCE:

APPLICANT:

Mr Akatama, in person

Of Oluno Correctional Facility, Ondangwa