REPUBLIC OF NAMIBIA NOT REPORTABLE

IN THE LABOUR COURT OF NAMIBIA

JUDGMENT

Case no: LC 188/2014

In the matter between:

1.1.1.1. **BELETE WORKU**

APPLICANT

And

THE HON. MINISTER OF JUSTICE JUDGMENT DEBTOR/DEBTORS CONTEMPT OF COURT ACCOMPLICES **1ST RESPONDENT**

THE CHIEF REGISTRAR OF THE HIGH COURT AND THE SUPREME COURT **2ND RESPONDENT**

THE MASTER OF THE HIGH COURT **3RD RESPONDENT**

THE INVESTMENT TRUST COMPANY/LIQUIDATORS **4TH RESPONDENT**

DR. WEDER, KAUTA & HOVEKA INC. MR RALPH. B. STRAUSS **5TH RESPONDENT**

ADV STEVE RUKORO **6TH RESPONDENT**

GOVERNMENT OF THE REPUBLIC OF NAMIBIA **7TH RESPONDENT**

Neutral citation: Worku v The Hon Minister of Justice (LC 188/2014) [2014] NALCMD 50 (22 December 2014)

Coram: SMUTS, J
Heard: 16 December 2014
Reasons: 22 December 2014

ORDER

(b)
The application is struck from the role. No order is made as to costs.

REASONS

SMUTS, J

(c) This application served before me on 16 December 2014. After hearing the applicant on the question of service, the application was struck from the roll with costs. These are my reasons for making the order to strike it from the roll and to vary the costs order.

(d) In this application, the applicant cites seven respondents. They are the Minister of Justice 'debtors/contempt of court accomplices' (sic) as first respondent, the Chief Registrar of this court as second respondent, the Masters (sic) of the High Court as third respondent, Investment Trust Company as fourth respondent, "Weder, Kauta & Hoveka Inc, Mr Ralph Strauss" as fifth respondent, Advocate Reinhard Veiko Rukoro as sixth respondent and the Government of the Republic of Namibia as the seventh respondent. The applicant makes serious allegations of impropriety against many of these respondents and seeks wide-ranging relief against them, even though the relief is not clearly formulated for the large part.

(e) The application is accompanied by what is termed a 'certificate of top urgency' which is dated 10 December 2014. There is a date stamp of the first respondent firm of 12 December 2014 and a stamp depicting the office of the Master of the High Court on 12 December 2014. There is also stamp of the office of the Minister of Justice dated 12 December 2014, a stamp of Investment Trust (Pty) Ltd and a date stamp of advocate Steve Rukoro, also of 12 December 2014.

(f) When the matter was called, the applicant appeared in person. Mr Strauss also appeared and a notice to oppose was delivered and filed on behalf of the fifth respondent. Mr Khupe, of Government Attorney was present in court and said that he appeared for the first, second, third and seventh respondents. I enquired from Mr Strauss and Mr Khupe as to whether the application had been served upon them or their respective clients. Mr Strauss acknowledged that he and his firm had received the application. Mr Khupe however indicated that his office had not received a copy of the application and was not aware of any service of the application upon his respective clients. He had appeared in court because he had seen that his clients' names were reflected up on the court roll.

(g) I then enquired from the applicant as to why they were no returns of service or any affidavits reflecting service or any application for condonation seeking non-compliance with the rules relating to service and a basis laid out in affidavit form to support such an application. The applicant indicated to me that he did not have the means to cause the process to be served by the deputy sheriff, as contemplated in Rule 5(1) of the rules of this court. I again enquired as to whether there were any affidavits reflecting service and why this was not addressed in a prayer for condonation for non-compliance with the rules relating to service. The applicant merely reiterated that he had not been required to make use of the deputy sheriff to serve process in prior applications. But he had he not provided any other proof of service. He also pointed out that the sixth respondent had been wrongly cited in the application and that he had in fact intended to cite Adv Steve Rukoro and had left a copy of the application at his office. I again enquired as to affidavits dealing with service or to support or an application for condonation. The applicant would appear to dispute that this was required. But he was not able to refer to any affidavits where service was dealt with –

either in support of an application for condonation or addressing the question of service.

(h)

(i) Whilst Rule 5(1) contemplates service by deputy sheriff, Rule 5(2) also permits service to be effected in the in one or other of the ways set out in the sub-paragraphs contained in that sub-rule. Rule 5(3) deals with service upon legal persons (who are not natural persons) in the various sub-paragraphs of that sub-rule. What is however clear is that Rule 5(6) requires a party to prove service of process by providing the court with a completed affidavit of service on Form1 and where process has been served by hand, to provide a copy of the receipt signed by or on behalf of parties indicating the name and designation of the recipient and the place, time and date of service or with a statement, confirming service on the other party or left it at any premises.

(j) In this application it is clear to me that there was no proof of service expressly required by the rules of the application upon the various respondents. I canvassed this issue on more than one occasion with the applicant. He was unable to address the absence of proof of service. He eventually asked for a postponement of the application. But the application was set down for 16 December 2014 and a postponement would not in my view be the appropriate course of action in the exercise of my discretion.

(k) The applicant referred to his fundamental constitutional right to approach the courts to assert his rights, as contemplated in articles 12 and 18 of the Constitution. But it is equally fundamental to due process of law that parties should be given proper notice and should be served with process instituted against them. They are after all entitled to have notice of legal proceedings against them. If they have no notice, then the ensuing process would be null and void and liable to be set aside. These considerations are also clearly implicit in article 12 of the Constitution, entitling every person to a fair trial.[1]

(l) The applicant also pointed out that he is a lay litigant and that I should take that

[1]See *Maletsky and Others v Standard Bank of Namibia Ltd and Others* (unreported 28 November 2011) case no. A 130/2011.

into account. Whilst allowances can at times be made when parties act without the assistance of legal practitioners, it is also important to note that the rules should apply equally, especially upon a fundamental question such as service of process. As I have pointed out, proper notice of process is a pre-requisite and cornerstone of any legal system. [2] The peremptory rules relating to service must be complied with or in the absence of compliance, a basis should be set out for condonation for non-compliance with the rules. The rules relating to service have clearly not been complied with in this application. There is no proof of service of the respondents apart from the fifth respondent, given Mr Strauss acknowledgment of receiving the papers. Nor is there any basis properly before me upon which I could grant condonation for non-compliance with the rules.

(m) It follows that the application should therefore be struck from the roll and I granted an order to that effect. That order was however accompanied by a costs order against the applicant. Section 112 of the Labour Act[3] precludes cost orders except when a party has been frivolous or vexatious. Neither counsel for the respondents requested such an order. Nor did I invite the applicant to address the question of costs. It would also appear that the applicant was not fully conversant with the rules relating to service. It would not necessarily follow that his conduct was vexatious of frivolous. But more importantly, he was not afforded the opportunity to address the question of costs. It follows that a cost order should not have been granted against him in the circumstances.

(n) Rule 16 refers to the rescission and variation of judgements or orders. This eventuality would not appear to be covered by the Rule. But Rule 22 provides that the rules of the High Court would apply where the rules of this court do not make provision for a procedure to be followed in any matter before court. Rule 103 of the High Court Rules provides that the court may of its own initiative rescind or vary any order or judgement made in respect of interest or costs granted without being argued. The question of costs was not argued. Given what I have already stated, it would follow that the order of costs should be rescinded or varied so that no order as to costs is thus

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[2] Erasmus Superior Court Practice at *Christian v Metropolitan Life Retirement Fund and 2 Others* case SC 3/2007.

[3] Act 11 of 2007.

made.

[12] In providing my reasons for the order given to strike the matter from the roll, I have decided to vary the order in respect of costs to the effect that no order as to costs should be given in respect of the striking of the matter from the roll. It follows that the order which had been given is varied to read as follows:

> The application is struck from the role. No order is made as to costs.

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D F SMUTS

Judge

APPEARANCES

APPLICANT:	Mr. B. Worku In Person
1st, 2nd, 3rd and 7th RESPONDENTS:	Mr. M. Khupe Instructed by Government Attorney
4th and 5th RESPONDENTS:	Mr. R.B. Strauss Instructed by Dr Weder, Kauta & Hoveka Inc.