

SUMMARY

REPORTABLE

CASE NO: A 199/09

**THE MEDICAL ASSOCIATION OF
NAMIBIA LIMITED
DR PC PRETORIUS**

**FIRST APPLICANT
SECOND APPLICANT**

and

**THE MINISTER OF HEALTH AND SOCIAL
SERVICES
MEDICINES REGULATORY COUNCIL
THE REGISTRAR OF MEDICINES
THE MEDICAL BOARD OF NAMIBIA
THE ATTORNEY GENERAL
THE PHARMACY COUNCIL OF NAMIBIA**

**FIRST RESPONDENT
SECOND RESPONDENT
THIRD RESPONDENT
FOURTH RESPONDENT
FIFTH RESPONDENT
SIXTH RESPONDENT**

GEIER, AJ

Practice and procedure – interlocutory applications in terms of Rule 6(11) – urgency thereof - not inconceivable that there will never be instances where such applications will not have to be brought on an urgent basis – accordingly it cannot be said that such applications ' can never be 'hit by the provisions of Rule 6(12)' –

Practice and procedure – interlocutory applications in terms of Rule 6(11) - urgency thereof - Practice Direction 26 (1) as issued by the Judge President on 2 March 2009

– requiring – except where rules of court provide otherwise - not less than five days between the date of service, or delivery of notice, of an interlocutory application – other than an urgent application - and the date of set down –

Practice and procedure – no reason why a litigant, who is required to bring an urgent interlocutory application, cannot bring such urgent interlocutory application with regard to the provisions of Rule 6(12), even if the requirements of Rule 6(12), in the normal course, relate to applications brought in terms of Rule 6(5) –

Practice and procedure – no reason why founding papers to such application should not address the requirements set by Rule 6(12) and also the need to depart from the ordinary requirements set by Practice Directive 26 – to enable Court to depart from the rules, forms and service, in terms of its powers which would be wide enough to condone the non - compliance with the requirements set by Rule 6(11) and the applicable Practice Directives -

Practice and procedure – applications and motions – authority conferred by resolution – allegation of authority to depose to affidavits meaningless - what should be alleged is authority to institute the application and to prosecute it –

Practice and procedure – general authority conferred by resolution – interpretation of – to be restrictively interpreted not as extending the specific authority granted by the resolution - but as limiting the authority to matters falling within or being incidental to the main authority as set out in the resolution – held that the bringing of an interlocutory application fell squarely within the purview of - and was sufficiently incidental to the bringing of the main application for review, and were second applicant had expressly been authorised“ ... to do all things necessary to bring the said main application to its final end and determination ... “, which was such a matter -

Doctrine of ‘unclean hands’ - applicable in circumstances where there was some or other dishonesty, fraud or mala fides on the part of the person who claimed protection for his rights –

Doctrine of 'unclean hands' - Court does not deny a person access thereto in respect of the enforcement of his rights, or the protection thereof, if not contaminated by some or other act of dishonesty or other impediment - To do otherwise will run counter to the principle that the Court will not close its doors to a litigant except in exceptional circumstances -

Doctrine of 'unclean hands' - Court will not close its doors to a litigant except in exceptional circumstances - To do so in unjustifiable circumstances will also run counter to Art. 12 of our Constitution where that right is guaranteed -

Practice and procedure –applications and motions – for variation of court order in terms of Rule 44(1)(b) – well- established rule of law that the principles involved in the interpretation of a judgment or order are essentially the same as those applicable to the construing of documents -

Interpretation of judgement - The court's intention is to be ascertained primarily from the language of the judgment or order - judgment or order and the court's reasons for giving it must be read as a whole in order to ascertain its intention - If, on such a reading, the meaning of the judgement or order is clear and unambiguous, no extrinsic fact or evidence is admissible to contradict, vary, qualify, or supplement it - different considerations apply when, not the construction, but the correction of a judgment or order is sought by way of an appeal against it or otherwise - if any uncertainty in meaning does emerge, the extrinsic circumstances surrounding or leading up to the court's granting the judgment or order may be investigated and regarded in order to clarify it - if despite that, the uncertainty still persists, other relevant extrinsic facts or evidence are admissible to resolve it -

Practice and procedure –applications and motions – for leave to execute judgment in terms of Rule 49(11) - which has been suspended pending an appeal - Court to which application for leave to execute is made has a wide general discretion to grant or refuse leave and, if leave be granted, to determine the conditions upon which the right to execute shall be exercised -

Practice and procedure –applications and motions – for leave to execute judgment in terms of Rule 49(11) – Court has wide general discretion - in exercising this discretion the Court should determine what is just and equitable in all the circumstances -

Practice and procedure –applications and motions – for leave execute judgment in terms of Rule 49(11) – in exercising this discretion and in the determination of what is just and equitable Court would normally have regard – to the potentiality of irreparable harm or prejudice being sustained by the appellant on appeal (respondent in the application) if leave to execute were to be granted - the potentiality of irreparable harm or prejudice being sustained by the respondent on appeal (applicant in the application) if leave to execute were to be refused – to the prospects of success on appeal, including more particularly the question as to whether the appeal is frivolous or vexatious or has been noted not with the bona fide intention of seeking to reverse the judgment but for some indirect purpose, e.g.. to gain time or harass the other party -where there is the potentiality of irreparable harm or prejudice to both appellant and respondent, the balance of hardship or convenience, as the case may be -

Practice and procedure –applications and motions – for leave execute judgment in terms of Rule 49(11) – in exercising the Courts discretion and in the in determination of what is just and equitable Court would also consider possible violation of constitutional rights - a situation that should be avoided in a constitutional dispensation and were the Court should guard against the possibility of this occurring -