

REPUBLIC OF NAMIBIA



IN THE HIGH COURT OF NAMIBIA, MAIN DIVISION, WINDHOEK  
RULING

<b>Case Title:</b>  Communications Regulatory Authority of Namibia  and  Mobile Telecommunications Company Namibia	Plaintiff    Defendant	<b>Case No:</b> HC-MD-CIV-ACT-OTH-2019/01367
		<b>Division of Court:</b> Main Division
		<b>Heard on:</b> 07 May 2021
<b>Heard before:</b> Honourable Mr. Justice Usiku, J	<b>Delivered on:</b> 07 May 2021	
<b>Neutral citation:</b> <i>Communications Regulatory Authority of Namibia v Mobile Telecommunications Company Namibia</i> (HC-MD-CIV-ACT-OTH-2019/01367) [2021] NAHCMD 213 (07 May 2021)		
<b>Order:</b>  <ol style="list-style-type: none"><li>1. The plaintiff is granted leave to appeal to the Supreme Court.</li><li>2. The matter is postponed to 27 October 2021 at 15:15 for a status hearing on the outcome of the appeal.</li><li>3. The parties shall file a joint status report on or before 20 October 2021.</li></ol>		
<b>Reasons for order:</b>		
USIKU, J:		

## Introduction

[1] This is an application by the plaintiff for leave to appeal to the Supreme Court against the order and judgment made by this court on 26 February 2021. For the sake of convenience, I shall refer to the parties as they are cited in the action.

[2] On 26 February 2021 this court made an order on the following terms:

1. The defendant's exception is upheld.
2. The plaintiff's particulars of claim are set aside and the plaintiff is granted leave to file amended particulars of claim, if so advised, within 15 days of this order.
3. The plaintiff is ordered to pay the defendant's costs, including costs of one instructing and two instructed counsel.
4. The matter is postponed to 07 April 2021 at 15h15 for a further case planning conference.
5. The parties shall file a joint case plan on or before 31 March 2021.'

[3] The events that preceded the making of the abovementioned order and the reasons for the order, are outlined in the reasons of the judgment delivered on 26 February 2021, and I am not going to repeat them here.

[4] Aggrieved by the foregoing order, the plaintiff now seeks leave to appeal against the order to the Supreme Court.

## Application for leave to appeal

[5] In summary, the grounds upon which the plaintiff seeks leave to appeal are to the effect that the managing judge erred in law and/or on the facts and/or misdirected himself in the following respects, namely in:

- (a) having not properly and carefully considered the judgment and order of the Supreme Court of 11 June 2018;
- (b) finding that para 106 of the judgment of the Supreme Court "does not confirm the point up to which the invalidity operates";
- (c) not dealing and/or not properly dealing with the fact that the judgment of the Supreme Court at para 106 confirmed the point of invalidity of the impugned statutory provisions;
- (d) not having carefully considered the provisions of the judgment of the Supreme Court under paras 106 and 107;

- (e) finding that the judgment in CRAN v Telecom did not deal with the meaning of “substitution” and the effect of putting the “substituted order” in quotation marks.

Defendant’s position

- [6] The defendant does not oppose the application for leave to appeal.

Analysis

[7] The test in applications for leave to appeal is whether there are reasonable prospects that another court may come to a different conclusion. Normally, leave to appeal is granted where the court is of the opinion that the appeal would have reasonable prospects of success or if there are some good reasons why the appeal should be heard, including circumstances where there are conflicting judgments on the matter under consideration.

[8] Having considered the issues raised in the present matter and the fact that there is a judgment of this court reaching a different conclusion on the same matter, I agree with the plaintiff that leave to appeal should be granted.

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

1. The plaintiff is granted leave to appeal to the Supreme Court.
2. The matter is postponed to 27 October 2021 at 15:15 for a status hearing on the outcome of the appeal.
3. The parties shall file a joint status report on or before 20 October 2021.

<b>Judge’s signature</b>	<b>Note to the parties:</b>
B Usiku Judge	Not applicable
<b>Counsel:</b>	
<b>Plaintiff:</b>	<b>Defendant:</b>
Mr Sisa Namandje Of Sisa Namandje & Co. Inc. Windhoek	Ms Auwanga Of Tjombe – Elago Inc. Windhoek