

IN THE HIGH COURT OF NAMIBIA  
MAIN DIVISION

In the matter between:

**REHOBOTH SHOOTERS CLUB**

Applicant

and

**THE MINISTER OF DEFENCE**

First Respondent

**THE NAMIBIAN DEFENCE FORCE**

Second Respondent

**THE TOWN COUNCIL OF THE TOWN OF REHOBOTH**

Third Respondent

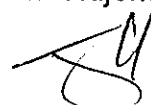
---

**APPLICANT'S FOUNDING AFFIDAVIT**

---

I, the undersigned, **JOHN HENRY EIMAN** do hereby make oath and say that:

1. I am an adult male person and residing at No. 762, Block A, Rehoboth, Namibia. The facts set out herein are within my own knowledge, true and correct, unless stated to the contrary or the context indicates otherwise.
2. I am the Chairperson of the Applicant, **REHOBOTH SHOOTERS CLUB**, a voluntary association, with perpetual succession separate from its members, with a written constitution with its principle place of business at Rehoboth Shooters Club, Camp 18 on the C24 Road, 7 km outside Rehoboth, Namibia, Namibia. I attach hereto a copy of the written constitution of the Applicant, marked "A".
3. The Applicant is duly authorised to launch these proceedings and I am duly authorised to depose to this affidavit. I attach hereto a copy of the extract of the minutes of the Executive Committee of the Applicant, marked "B".
4. The First Respondent is **THE MINISTER OF DEFENCE**, an adult male Cabinet Minister and the Minister responsible in terms of or under the Defence Act, Act of 2002 ("the Defence Act") of the Ministry of Defence, Dr Sam Nujoma Road,

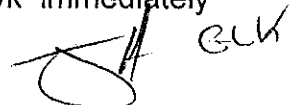
 GILK

Windhoek, care of the Government Attorney, 2<sup>nd</sup> Floor, Sanlam Centre, Independence Avenue, Windhoek, Namibia.

5. The Second Respondent is **THE NAMIBIAN DEFENCE FORCE**, duly established in terms of section 2 of the Defence Act, of the Headquarters of the Namibian Defence Force, Dr Sam Nujoma Road, Windhoek, Namibia, care of the Government Attorney, 2<sup>nd</sup> Floor, Sanlam Centre, Independence Avenue, Windhoek, Namibia.
6. The Third Respondent is **THE COUNCIL OF THE TOWN OF REHOBOTH**, a Council established in terms of section 6(1)(b) of the Local Authorities Act, Act 23 of 1992 (as amended), of the Offices of the Municipality of Rehoboth, Niklaas Olivier Street, Rehoboth, Namibia.
7. The Third Respondent is cited herein due to their direct and substantial interest that it may have in these proceedings. No orders are sought against it, save in the event that it elects to oppose any of the orders sought in the application, which, in that event, it too is to pay the costs, jointly and severally, the one paying the other to be absolved.
8. This is an application, on an urgent basis, for a spoliation order to restore the Applicant's lawful and undisturbed possession and occupation of the premises known as "the Rehoboth Shooters Club" situated at or on a portion of Camp 18 on the C24 Road, outside Rehoboth, Namibia, for the eviction of the Namibian Defence Force, and for an interdict that the Applicant should not unlawfully be deprived of its possession and occupation of the said premises by the Namibian Defence Force. The grounds upon which the Applicant makes this application appear in detail hereunder:
9. The Rehoboth Shooters Club (i.e. the Applicant) has been in lawful and undisturbed possession and occupation of the premises for a number of years – at least since **September 2004**.
10. In or about 2004, the Applicant approached the Town Council of Rehoboth (i.e. the Third Respondent) to be allocated premises to establish a shooting range for its members. The Town Council approved the application, and issued a letter to the Applicant, dated 10 September 2004, of which I attach a copy thereof hereto, marked "C".

 GCK

11. Since then in 2004, the Applicant has been in undisturbed possession and occupation of the premises. The premises were a vacant piece of land, approximately 7km outside Rehoboth on the C24 Road (which leads to Klein-Aub village). In order for the Applicant to utilise the premises for its intended purpose – i.e. a shooting range – the Applicant fenced in the premises, and erected a sign post with the name of the Applicant. The premises are accessed through a gate, which is locked with a padlock. On the premises, the Applicant constructed absorption facilities, and placed a water reservoir of 2,500 litres, which is on a 5 metre steel stand. On the premises there is also a shipping container, where the Applicant's stores its movable assets, like chairs, tables, gun rests and targets. The Applicant also erected a roof structure on the premises.
12. The improvements were made by the Applicant's members, who used their own moneys and their own services to work on the land.
13. The Applicant's members use the shooting range to practice target shooting and competitive or recreational target shooting. The premises are about 5 hectares in size. I attach hereto a photograph of entrance of the premises, which the name of the Applicant prominent on the front façade, marked "D.1". I also attach a series of photographs of the general view of the shooting range, with several members of the Applicant and members of the public in attendance at one of the competitions in 2018, marked "D.2" to "D.6". It is apparent that the Applicant has had effective control and occupation of the premises.
14. As stated above, since 2004, the Applicant has been in undisturbed and peaceful occupation and possession of the premises, and would frequently arrange shooting practices or competitions between its members, or with other similar associations. The individual members would also attend to the shooting range for practising or training. At least, there will be an activity on a daily basis throughout the year, with perhaps the period over the festive season, when there will less activities at the shooting range as members would be leaving for holidays.
15. On Tuesday 18 December 2018, I learnt that members of the Namibian Defence Force entered the premises, and took off the sign post of the Applicant and in its stead, erected a sign post of the Namibian Defence Force. Disturbed by this, I and the Vice-Chairperson of the Applicant, Mr Dawid George van Wyk immediately

Handwritten signature and initials, possibly "D. van Wyk" and "D.G.W.", in black ink.

attended to the premises, and found that the Applicant's padlock on the gate was removed – in fact broken off – and the gate was closed with a chain and a padlock. A sign post of the Applicant was also removed.

16. On the sign post was prominently written the following:

**WARNING!!!  
YOU ARE ENTERING A MILITARY ZONE  
AREA  
TAKING PHOTOS, SKETCHES, PLANS  
MODEL OR NOTES OF MILITARY AREA  
OR BUILDING IS NOT ALLOWED AT  
ALL OR IS PROHIBITED IN TERMS OF  
SECTION 55 OF DEFENCE ACT OF  
2002**

17. I attach hereto a photograph of the sign post erected on the premises, marked "E". Prior to that, I was on the premises on Sunday 9 December 2018, and we still had access to the premises, and the sign post as depicted in annexure "E" was not there. The erection of the sign post must have been done after 9 December 2018.
18. When we noticed these developments, Mr van Wyk and I proceeded to the military base of the Namibian Defence Force outside Rehoboth, and spoke to a Lieutenant Colonel Haufiku, and raised our concerns of the unlawful occupation of the Applicant's premises. He informed us to contact the Minister of Defence as he only takes orders from the Minister, and he cannot answer any of our questions. He also provided us with a telephone number of a General Kashopola, whose telephone number was unavailable after we tried several times to telephone it.
19. After we did not receive a satisfactory answer or response, we then attended to the Town Council, but all of the officials who would have assisted us, were on leave for the festive season. The acting Chief Executive Officer, Mr Tutu Haikena, who was in attendance, was unable to assist us as he was not aware of the occupation of the premises by the Namibian Defence Force. He apparently only commenced employment with the Town Council a month prior that, and thus could not assist us.
20. The following day, i.e. Wednesday 19 December 2018, we proceeded to the Rehoboth Police Station to seek assistance from the Namibian Police. The Police did



not want assist us, and only recommended that we warn the members of the Namibian Defence Force.

21. We resolved to enlist the services of a legal practitioner. However, all the law firms that we contacted were already closed for the festive season by then. During the weekend of 22-23 December 2018, we managed to contact the Applicant's current legal practitioner, Norman Tjombe (who was out of Windhoek at the time), who advised us to lodge a criminal complaint with the Namibian Police. On Monday 24 December 2018, I again attended to the Rehoboth Police Station and lodged a criminal complaint of unlawful trespassing and breaking and entering the premises. I attach hereto a copy of the written statement that I made at the Police Station, under CR No. 170/12/2018, marked "F".
22. I have made inquiries with the Police Station on the progress of the matter, but was informed that the police officer who would investigate the matter is on leave.
23. On **Thursday 3 January 2019**, I instructed the Applicant's legal practitioner, who returned to Windhoek the day before, to address an urgent letter to the Permanent Secretary of the Ministry of Defence. A copy of the aforesaid letter is attached hereto marked "G". In terms of the letter of demand, it was placed on record that legal action will be taken should the members of the Namibian Defence Force not vacate the premises and restore possession of premises to the Applicant by the close of business on Friday 4 January 2019.
24. At the time of deposing to this affidavit, the Applicant and its legal practitioner did not receive any response or reply to its urgent letter. The Namibian Defence Force remain in unlawful possession and occupation of the premises.
25. This application is urgent. The Namibian Defence Force has unlawfully deprived the Applicant of its lawful and undisturbed possession and occupation of the premises. The Applicant and its members are due to commence the activities for the new year within the second week of January 2019. Several members will be utilising the shooting range for shooting practices and competitions. With the military now in occupation of the premises, the members will not be permitted to enter and be present on the premises. This will create serious conflict between the members of the Applicant and the members of the Namibian Defence Force.

 G. L. W.

26. There are several other valuable assets of the Applicant on the premises. As unable to enter the premises, we are not sure of the safety of these assets.
27. The Applicant launched this application approximately 20 days after we learnt of the unlawful occupation of the premises. I submit that the Applicant did not delay the launching of this application for the following reasons: when we learnt of the unlawful occupation of the premises by the Namibian Defence Force, we immediately and on the same day (i.e. Tuesday 18 December 2018) attended to the Namibian Defence Force in Rehoboth to raise our concerns, and attended to the Namibian Police for assistance, but we did not receive any help. We also attended to the Town Council for assistance – and similarly, no assistance was forthcoming.
28. We then searched for a legal practitioner and managed to enlist the services of the Applicant's current legal practitioner, who provided telephonic advice to lodge a criminal case. We lodged the criminal case, but that has not resulted in any outcome to date. An urgent letter by the Applicant's legal practitioner to the Permanent Secretary of the Ministry of Defence, which threatened legal action, did not solicit any response.
29. It should also be noted that we needed a resolution of the Applicant's Executive Committee to institute these proceedings, and of the members of the Executive Committee were out of town for the festive season. We needed to contact all of them to propose and pass the urgent resolution, which took a few days to materialise. Some of the members of the Executive Committee also sought legal advice prior to passing the resolution.
30. The Applicant thus brought this application without delay.
31. Should this situation persist, I fear that some of the members of the Applicant will not tolerate the situation, and would wish to utilise the premises. This will lead to the Applicant's members to be arrested. The situation is simply intolerable.
32. Should the Applicant launch this application in the normal course, the Applicant would not have an adequate remedy as the Applicant would have lost income which it desperately need for the community. I cannot imagine the financial losses that the



GLK

Applicant would suffer as a result, not to mention the reputational damages that the Applicant would suffer.

33. The Applicant has not been presented with any written communications regarding to be evicted despite its occupation and possession of the premises for over 14 years. No court order was served on the Applicant for its eviction. Namibian Defence Force has simply taken the law unto its own hands in evicting the Applicant, which is unlawful. I accordingly submit that the Applicant has a right – even on a *prima facie* basis – which is now being violated. I am advised by the Applicant's legal practitioner, which advice I verily believe, and I submit that in terms of section 16(1) of Defence Act, the Minister may designate areas wherein the Namibian Defence Force or any portion thereof may, without consent of any person affected or likely to be affected to conduct military exercises.
34. However, this power of the Minister is subject to section 16(3) of the Defence Act, which requires, in section 16(3)(b), the Permanent Secretary of the Ministry of Defence to publish a notice in the Government Gazette and in a newspaper circulating in that district, inviting all interested persons to make representations, prior to designating the area to conduct military training exercises.
35. I have perused all the major newspapers prior to 19 December 2018 to see if there was any such notice published, and I can confirm that no such notice was published. Accordingly, I submit that the Minister has not exercised his statutory powers in terms of section 16(1) of the Defence Act, and the occupation of the premises by the Namibian Defence Force is therefore unlawful for that reason too.
36. The balance of convenience favours the granting of the orders. There cannot be any inconvenience to be suffered by the Namibian Defence Force for following the law. It has acted unlawfully and continuous to do so, and cannot claim any inconvenience. I should mention that the Namibian Defence Force has in the past approached the Applicant to utilise the premises for training purposes. The most recent was in 2017, and in response to these requests (which were always informal and verbal), I addressed a letter to the Namibian Defence Force on 13 October 2017, inviting it to make proposals of its intended utilisation of the shooting range. I attach hereto a copy of the aforesaid letter, marked "H".



GLK

- 37. To date, despite the passing of more than one (1) year, we have not received any communication from the Namibian Defence Force, and thus it cannot be urgent for it to use the premises, and thus there cannot be any inconvenience to Namibian Defence Force should the orders be granted.
- 38. I fear that I will suffer irreparable harm should the orders not be granted, as set out herein above.
- 39. I accordingly submit that I have made out a case for the orders prayed in the notice of motion to which this affidavit is annexed.



**JOHN HENRY EIMAN**

I hereby declare that the deponent has sworn to and signed this statement in my presence at **WINDHOEK** on the 7<sup>th</sup> day of **JANUARY 2019** and he declared as follows: that the facts herein contained fall within his personal knowledge and that he understands the contents hereof; that he has no objection to taking the oath; that he regards the oath as binding on his conscience and has declared as follows: "I swear that the contents of this declaration are true and correct, so help me God."



**COMMISSIONER OF OATHS**

FULL NAMES:

CAPACITY:

ADDRESS:

**GILROY LEONARD KASPER**  
 Commissioner of Oaths / Legal Practitioner  
 Namibia  
 No. 27 Helnitzburg Street  
 Luxury Hills, Windhoek