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Pro **Bono**

INFORMATION ABOUT NAMIBIA'S LAW ON ...

POLICE SEARCHES

ProBono is a monthly column by the Legal Assistance Centre designed to inform the public about Namibian law on various topics. You can request information on a specific legal topic by sending an SMS to 081-600-0098. Note that we will not be able to give advice on specific cases in this column, only general legal information.

The law provides for searches with a warrant issued by a court, and also without a warrant in some circumstances.

Search warrants

In terms of the *Criminal Procedure Act 51 of 1977*, a search warrant may be issued by a court only where there is a reasonable suspicion that a crime has been committed, and reasonable grounds to believe that evidence connected with that crime may be found in the proposed search.

A search warrant must satisfy the “intelligibility principle”. This principle has its roots in the rule of law which is a founding value of our Constitution. The rule of law requires that the exercise of state power must be accountable, understandable and predictable. This means that a search warrant must be crafted in a way that enables the person on the receiving end to know why his or her rights have to be interfered with in the manner authorized by the warrant.

The warrant must cite the legal provision which authorises the search. It must identify the searcher; the person, container or premises to be searched; and what is being sought. It must also specify the offence which triggered the criminal investigation and name the suspected offender.

These requirements are designed to satisfy the rule of law and protect the constitutional rights to privacy and property without unduly hampering law enforcement.

A search authorised by a warrant must take place in the daytime, unless the warrant says that it may be done at night. Persons affected by the search have a right to demand a copy of the warrant.

Police can similarly get a search warrant for the place where a meeting is held, if there is reason to believe that a crime is being planned or committed at the meeting, or that the

meeting will result in danger to national security or law and order. This kind of search can take place at any time of day or night.

Searches without a warrant

The *Criminal Procedure Act* authorises searches without a warrant if the person involved consents to the search after being informed of the purpose of the search and of the right to refuse consent.

Regardless of consent, police also have the power to conduct a search without a warrant if they have a reasonable belief that a search warrant would be issued, but the delay involved would probably defeat the purpose of the search. For example, suppose that police are informed that a man has just stolen a cell phone from a woman's handbag. They give chase and search this man. It would be useless to get a search warrant and return later to search the suspect because he is likely to run away or to give the cell phone to someone else in the meantime. In such a case, it would be reasonable to assume that a search warrant would be issued, and it is clear that the delay to get the warrant would make the search useless.

Police also have certain powers to locate and question people without a warrant. If a police official investigating a crime reasonably suspects that a person with relevant information is present at a place, that police official may enter without a warrant to question the person and take a statement. But if the place is a private residence, police can enter without a warrant only with the consent of the persons living there.

Police are also authorised to immediately search anyone who is arrested and to seize any item from that person without a warrant.

Two Namibian court cases give examples of when a search without a warrant is reasonable. In one case, the drug enforcement squad was tipped off about suspected drug dealing from a house in a particular street, but it was not clear exactly which house was involved. It was not possible to get a search warrant because the exact address was unknown, but there was evidence suggesting that the suspect was dealing in drugs. During the investigation, police noticed suspicious behaviour at one house in the street they were monitoring. They approached the house and asked the owner if they could search it. The owner refused consent, so the police entered by force. They stated the purpose of the search and found bags of money and drugs hidden inside the house. The suspect was arrested and the evidence was seized. The High Court found that the search and seizure were legal.

In another case, a drug squad decided to observe a house suspected as being a drug-dealing point, and to stop and search any car arriving at that house. After one car stopped briefly in front of that house, police gave chase as it was driven away. The driver jumped out of the car, ran into a house and escaped – but was eventually caught and searched without a warrant. Nothing illegal was found in his possession. The High Court found that there was no basis for a reasonable belief that a warrant could have been obtained under these circumstances – meaning that the police had actually committed an illegal assault of the man in question.

Broader authority for searches without warrants is contained in the *Police Act 19 of 1990*. This law allows police to search any person, place, vehicle or container without a warrant if all of the following circumstances are satisfied: (1) The delay in getting a warrant would defeat the object of the search. (2) The search is not excessively intrusive in the light of the threat or crime concerned. (3) The person concerned, if present, is informed of the purpose

of the search. (4) The purpose of the search is to preserve national security, maintain law and order, investigate a crime, prevent crime or protect life and property. Anything found during such a search can be seized if it is relevant to the purpose of the search.

Rules about searches with or without a warrant

Police who are carrying out any lawful search can use reasonable force, such as breaking a door or a window, to overcome resistance to the search. They must first demand admission and state their purpose unless this would be likely to give the persons inside time to destroy or dispose of the relevant evidence.

Another general rule is that a woman may be searched only by another woman.

In general, police who are conducting a search must introduce themselves and produce a search warrant, or explain the basis and purpose of a search without a warrant. If a search is conducted improperly, the court may decide to disregard the evidence seized in that search.