

REPUBLIC OF NAMIBIA



IN THE HIGH COURT OF NAMIBIA
NORTHERN LOCAL DIVISION, OSHAKATI
PRACTICE DIRECTION 61

Case Title: Grace Ndamona Kapiye Plaintiff and Andreas Haindongo T/A AH Construction CC Defendant	Case No: HC-NLD-CIV-ACT-CON-2019/00227
	Division of Court: High Court, Northern Local Division
	Heard on: On the papers
	Delivered: 26 March 2024

Heard before: Honourable Mr. Justice Munsu

Neutral citation: *Kapiye v Haindongo T/A AH Construction* (HC-NLD-CIV-ACT-CON-2019/00227) [2024] NALCNLD 31 (26 March 2024)

ORDER

1. The Defendant's application for condonation for the non-compliance with the order dated 25 April 2022 is refused.
2. The Defendant is ordered to pay the costs occasioned by the application, subject to rule 32(11).
3. The matter is postponed to 16 May 2024 at 08h30 for a status hearing.
4. The parties are directed to file a joint status report by 13 May 2024.

MUNSU J:Introduction

[1] This is an application for condonation by the defendant for the non-compliance with the case plan order issued on 22 April 2022. In the said order, the court directed the parties to exchange pleadings, with the plea deadline being 10 May 2022. The defendant failed to file his plea, hence this opposed application for condonation and upliftment of bar.

The application

[2] The defendant explains the failure to file the plea as having been occasioned, firstly, by the fact that during his consultation with counsel on 03 March 2022, he was advised to provide the founding statement in respect of the close corporation by the name AH Constructions CC and was unable to locate same until the deadline for filing the plea lapsed. Secondly, he states that he could not file his plea because his legal representative was indisposed. Thirdly, he explains that on 26 September 2022, his legal representative withdrew from the matter. He then applied for legal aid and his current legal representative was appointed.

The opposition

[3] The plaintiff opposes the application on the basis that the defendant has failed to provide a reasonable explanation. She states that a period of more than 18 months has lapsed since the defendant's non-compliance and the matter has not even progressed beyond the case planning conference stage. She adds that this matter should have been finalised with judgment on the merits. Secondly, she states that she has suffered severe prejudice, particularly with regard to legal costs incurred as a result of the defendant's non-compliance with court orders. Thirdly, she explains that the defendant does not enjoy any prospects of success and that the present application only serve to delay the matter.

Discussion

[4] An applicant seeking condonation is required firstly, to provide a reasonable and bona fide explanation for the non-compliance, and secondly, must demonstrate good prospects of success

on the merits. The law requires the applicant to provide a full, detailed and accurate explanation for the entire period of the delay, including the time of the application for condonation.¹

[5] To date, the defendant has not explained the relevance of the founding statement in relation to the filing of the plea. In any event, the plea was only due on 10 May 2022, and on his version, he had been engaged in locating the founding statement since 03 March 2022. Accordingly, he had ample time to ensure that he complied with the court order.

[6] Following the withdrawal of the defendant's legal representative on 24 November 2022, the matter was on 09 December 2022 postponed to 06 February 2023 for the notice of withdrawal to be served on the defendant. Despite the notice of withdrawal of representation having been served on the defendant on 09 December 2022, he was absent from court on 06 February 2023 when he ought to have been in attendance as he was aware of the date and the fact that his legal representative withdrew. His absence prompted another postponement to 13 March 2023 for him to be in attendance. The plaintiff incurred costs to serve the court order on him.

[7] On 13 March 2023, the defendant was in attendance and opted to conduct own defence. He was to file his condonation application, however, he waited until 03 April 2023 to apply for legal aid. This is despite the fact that he had been aware as of 09 December 2022 that he was without legal representation. The delay of almost four months to apply for legal aid, after the matter had been pending for long is unacceptable under the circumstances. It is only slightly over a month away from being two years from the date of non-compliance to the date of moving the application for condonation, with the matter not having progressed beyond the case planning stage. In the process, the plaintiff has suffered prejudice as a result of the defendant's non-compliance with the court orders.

[8] Lastly, the defendant has not demonstrated any prospects of success. His explanation is only limited to stating that the matter involves a contractual relationship between the parties and that it would be in the interest of the administration of justice to grant him an opportunity to file his plea and counterclaim. Thus, the explanation does not assist the court in assessing whether the defendant enjoys any prospects of success. Accordingly, the application for condonation stands to be dismissed.

¹ See *Minister of Health and Social Services v Amakali* 2019 (1) NR 262 (SC), *TelecomNamibia Ltd v Nangolo and Others* (LC 33 of 2009) [2012] NALC 15 (28 May 2012).

Costs

[9] This is an interlocutory application subject to rule 32(11).

The order

[10] In the result, the following order is made.

1. The Defendant's application for condonation for the non-compliance with the order dated 25 April 2022 is refused.
2. The Defendant is ordered to pay the costs occasioned by the application, subject to rule 32(11).
3. The matter is postponed to 16 May 2024 at 08h30 for a status hearing.
4. The parties are directed to file a joint status report by 13 May 2024.

	Note to the parties:
D MUNSU Judge	None
Counsel:	
Plaintiff:	Defendant:
J. Greyling Of Greyling & Associates, Oshakati.	L. Nghipandulua Of the Directorate of Legal Aid. Ondangwa.