



**NOT REPORTABLE**

CASE NO: SA 63/2015

**IN THE SUPREME COURT OF NAMIBIA**

In the matter between:

**ANDREAS SINDLGRUBER**

**APPELLANT**

and

**SUNCICA HESSEL-ENKE**

**RESPONDENT**

**Coram:** SHIVUTE CJ, SMUTS JA and FRANK AJA

**Heard:** 24 October 2017

**Delivered:** 8 November 2017

**Summary:** The parties who were divorced and with the intention of settling in Namibia with their children, acquired property, as joint co-owners. The relationship between them soured and as a result, the respondent moved out of the joint dwelling and purchased her own property. She then instituted action against the appellant in the court *a quo* in which she sought the division of the common property (dwelling), half of the rental received by the latter in respect of the said property and an order declaring that she was not responsible for a loan which the Appellant procured from Bank Windhoek and that such was to be repaid by the latter alone.

The Appellant in reconvention, sued for an amount in excess N\$1.7 million, in respect of rates and taxes, loan repayments to Bank Windhoek and Nedbank, renovations and

refurbishments as well as monies lent and advanced to the respondent for purchasing furniture and a business.

The record filed by the appellant was incomplete in certain material respects. Three further volumes were filed two court days before the hearing of the appeal without any application for condonation.

*Held* – that Appellant had a duty to file a complete record timeously and failure to do so necessitated a condonation application, and which normally should not be moved from the bar. As there was no prejudice to the respondent or the court in this instance, the matter was not complicated and the respondent did not oppose the application but sought finality, the court considered the prospects of success.

*Held* – that the appellant failed to adduce sufficient evidence to prove his claims against the respondent. However, if there are any amounts due to the City of Windhoek, in respect of rates and taxes, such claims only prescribe after a period of 15 years , making the latter jointly liable for such.

*Held* – that the parties are indeed joint co-owners and as such, the order of the court *a quo* in respect of the sale of the dwelling and the rental due to the respondent was confirmed.

The Court found that the appellant had no prospect of success and therefore struck the matter from the roll with costs.

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## APPEAL JUDGMENT

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FRANK AJA (SHIVUTE CJ and SMUTS AJA concurring):

### Introduction

[1] Respondent (as plaintiff in the court *a quo*) instituted action against the appellant (as defendant in the court *a quo*) seeking the division of an alleged joint ownership of a dwelling house situated in Windhoek, as well as half the rental received by appellant in respect of the property over a period of time coupled with what essentially amounted to a declarator to the effect that the respondent was not responsible for a loan which appellant procured from Bank Windhoek and that this loan had to be repaid by appellant only. This loan is relevant to the division sought as it was secured by a mortgage bond registered over the joint property.

[2] Appellant admitted that the dwelling house constituted joint property and the respondent was thus entitled to a half share upon division. He however instituted counterclaims in excess of N\$1,7 million in respect of liabilities he alleged he incurred in respect of the property. These counterclaims were made up of the following components; namely, loan repayments to both Bank Windhoek and Nedbank that he incurred, rates and taxes allegedly paid to the City of Windhoek (Local Authority), 'refurbishments and renovations' made to the property and monies lent and advanced to respondent to purchase furniture and a business.

[3] In reply, respondent raised prescription in respect of all the counterclaims insofar

as payments were sought that predated the service of the counterclaim by more than 3 years. In addition the respondent denied her liability in respect of the bank loans on the basis that the Nedbank loan was taken to enable appellant to repay a debt owing to her by him and the Bank Windhoek loan (and the concomitant mortgage bond registered over the property) was taken by appellant without her consent and solely for his personal use. It is denied that appellant made any of the alleged refurbishments and renovations with her consent and that they were necessary or that she was given money to purchase furniture and a business. Respondent admitted liability for half share in respect of rates and taxes upon proof of such amounts being paid by the appellant.

[4] The court *a quo* found in favour of the respondent in respect of her claims and accepted her version as far as the bank loans, the purchase of the furniture and business were concerned. It found that appellant did not prove the quantum of his other claims and thus dismissed or granted absolution from the instance in respect of the counterclaims and made the following order:

[23] In the result, the following order is made:

- [1] Judgment in favour of the plaintiff in the sum of N\$463,550.00 being half of the rental for the period 1 July 2010 to 30 August 2015.
  - [2] The defendant is ordered to render to plaintiff an account for half of the rentals received for the period 1 September 2015 to the date of this judgment.
  - [3] Interest on these amounts of the rate of 20% per annum from the date of each payment received to the date of payment.
- [4.1] The property is to be evaluated by a sworn evaluator within two

weeks of this court's judgment. The costs for the evaluation are to be borne in equal shares by the parties;

- [4.2] That a receiver be appointed by agreements between the parties, and failing agreement by the president of the Law Society of Namibia at the time, whom shall have the power, *inter alia*;
- [4.3] To receive and sell the property by private sale at a price that is not less than the price determined by the aforementioned sworn evaluator;
- [4.5] To pay any liabilities due on the property from the proceeds of the sale, subject thereto that any amount owing in respect of the Bank Windhoek bond shall be fully deducted from the defendant's share of the profits from the proceeds of the sale;
- [4.6] Subject to paragraph 4.5 above, to divide and pay the profits from the proceeds of the sale to the parties equally;
- [4.7] In selling the property as aforesaid, to give the plaintiff and the defendant first option to purchase the respective half share of the property from the other party, subject thereto that the party shall exercise his or her option first in time, as the case may be, and is in an existing financial position to purchase such half share (whether that be in cash, bank financing or otherwise) shall be given preference in respect of the first option to purchase the other parties half share;
- [4.8] Be entitled to apply to the High Court of the Republic of Namibia for any further directions that he shall or may consider necessary to give effect to his obligations in terms hereof and the law;
- [4.9] The fees of any receiver so appointed shall be shared equally between the parties and shall be deducted from the proceeds of the sale;
- [5] Cost of suit in favour of the plaintiff which will include the cost of one

instructing and one instructed counsel.

[6] The counterclaim is dismissed.'

[5] The appellant appeals against the whole of the judgment of the court *a quo*.

### Joint Ownership

[6] The parties were married to each other in Austria where they lived prior to moving to Namibia. They got divorced in Austria but thereafter reconciled and decided to start a new life with their children in Namibia. They however did not remarry.

[7] In the process of establishing a new life in Namibia, the dwelling house that features in this matter was acquired by them jointly and hence they became co-owners of the property and the property was also registered in both their names as co-owners.

[8] This court in a recent judgment described the position of co-owners as follows:

'[14] . . . Co-ownership is simply the fact of two or more persons owning a thing in undivided shares which shares need not be equal. This factual situation comes about through agreement (free co-ownership) or through other relationships such as a marriage or partnership (bound or restricted co-ownership). Because the share of co-owner is indivisible no co-owner has a right to a specific physical part or portion of the thing that is the subject matter of the co-ownership. Whereas a joint owner in a free co-ownership relationship can dispose of his undivided share without consent of his co-owners the joint owners in a restricted co-ownership relationship cannot do this . . . In general a co-owner in a free co-owner relationship can insist on a partitioning or division of the joint property at any time . . . Barring an agreement between the co-owners, each co-owner is liable for his share of the expenses and losses involved in the running and upkeep of the joint property.'

[15] It follows from what is stated above that upon partitioning or division, each co-owner is entitled to his/her share of the property after the settling of the expenses or debts in connection with the property. Where the co-owners cannot agree on the division a court can order the sale of the property and the division of the money or order one co-owner to buy out the other or generally make such order as it deems fit to effect the division or partitioning . . . .<sup>1</sup>

[9] To the above principles relevant to co-owners I can just add the following for the purposes of this appeal: Where a co-owner pays all the expenses, such co-owner may recover from the other co-owners their proportionate shares of such expenses. It goes without saying that just as co-owners share expenses they all are entitled to their share of the profits as well. A co-owner may not change or improve the property without the consent of the other co-owner.<sup>2</sup>

[10] The effect of the pleadings was to seek a division of the property in joint ownership based on a debatement of what liabilities in respect of the joint property had to be taken into account in the division. I interpose here to mention that the appellant conceded that respondent was entitled to half the rental received in respect of the common property but maintained that that had to be set-off against her claim for half the rental expenses referred to in his counterclaim.

[11] A free co-ownership relationship is not a partnership. Where such co-owners enter into an agreement as to the use and enjoyment of the joint property which covers the issues of expenses and distribution of profits it may be difficult to distinguish this relationship from a partnership but this does not mean that a co-owner relationship amounts to a partnership. In the present matter, there is no evidence that the parties'

<sup>1</sup> *Joram J Tjamuaha and Another v Master of the High Court and Others*, case SA 62/2015 delivered on 26 October 2016 paras [14] and [15].

<sup>2</sup> *Silberberg and Schoeman: The Law of Property*, 5<sup>th</sup> ed at 134 and *LAWSA* vol 27 paras 209 and 210.

relationship was governed by any agreement between them. It was solely governed by the law relating to free co-ownership relationships.

[12] Counsel for appellant submitted both in the court *a quo* and on appeal that a universal partnership has been established between the parties. This submission is misconceived and without merit. As pointed out by the court *a quo* this was never pleaded and there is no evidence to support it. Further, it seems to be based on the misconception that a free co-ownership constitutes a partnership.

[13] Counsel for appellant also submitted, probably following from his submission that the co-owners were partners, that respondent had to seek a debatement of accounts on division of the joint property and hence that the court *a quo* could not grant the order it did. This approach ignores the effect and context of the pleadings and pre-trial order. From the nature of the counterclaims, a debatement of accounts was exactly what happened in the court *a quo*. Thus, if appellant could establish any of his counterclaims this would have had an effect on what would eventually flow to the respondent subsequent to the division. If the appellant did not properly prepare and prove his claims it is his fault and there is no basis to suggest he must get another chance in this regard.

#### Record

[14] The original record filed consisted of seven bound volumes running to 885 pages. This record however was incomplete. This became apparent as soon as one started to read the record. The exhibits bundle almost exclusively used in the court *a quo* did not form part of the record. Other exhibits, such as the witness statements, which were handed in at the trial also did not form part of the record. Some exhibits which formed



part of the pleadings were part of the record but were not properly identified as exhibits. The pre-trial order which in terms of the Rules of the High Court in essence substitutes the pleadings and defines the issues of fact and law that need to be determined at the trial did not form part of the record.<sup>3</sup> These omissions made it difficult to make sense of the evidence and to get a full picture of the parties' respective cases. I in fact on a number of occasions nearly gave up on this endeavour. Two clear days prior to the hearing of the appeal a further 3 volumes running to 384 pages were filed so as to ensure that a complete record was placed before this court.

[15] With the additional volumes everything that was placed before the court *a quo* was placed before this court. This was also not correct. To place the parties' discovery before this court served no purpose. Documents discovered but not referred to in evidence and hence not exhibits at the trial are irrelevant on appeal. Neither do the arguments addressed to the trial court ordinarily form part of the appeal record.

[16] What a record must and must not contain should be known to legal practitioners practising in the Supreme Court. In the *Channel Life Nam v Otto*<sup>4</sup> case the position was stated as follows:

'[48] . . .

In regard to the record of appeal, practitioners must check the record to ensure -

- (i) that there are no pages missing from the record;
- (ii) that all the relevant documentary exhibits are before the court;
- (iii) that there are no unnecessary documents included in the record, such as heads of argument used in the court *a quo* and arguments raised in that court, unless such heads of argument are relevant to some or other aspect of the appeal, eg to

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<sup>3</sup> *Rules of the High Court*, Rule 37(14).

<sup>4</sup> 2008 NR 432 (SC) at para [48].

- show a concession made by the opposite party;
- (iv) that the record complies in every respect with the provisions of rule 5(8), (9), (10), (11), (12), (13) and (14) of the Rules of the Supreme Court.
  - (v) Where a litigant in an appeal brings an application before this court, eg an application for condonation, and that application is opposed, the party bringing the application is responsible to bind the documents relevant to the application and to provide a proper index.<sup>15</sup>

[17] In the *BV Investments* case certain aspects relating to the record are dealt with as follows:

[61] As a witness statement is read out by a witness there is simply no excuse for a record not to be complete when it comes to the evidence-in-chief. For a record to be replete with 'indistinct' inscriptions in this regard is unacceptable. The appellant's legal practitioner, who is responsible for the record and is paid to peruse it, can have this cleared up by reference to the witness statement which will make it obvious what the witness read out even though it is indistinct when listening to the recording of such evidence. The same applies where a witness reads from an exhibit when an indistinct recording can be cleared up by way of reference to the exhibit read from.

[62] The only exhibits which should form part of the record are those exhibits referred to and handed in at the hearing in the court *a quo*. To simply attach to the record all the discovery notices with all the documents accompanying them has never been allowed and is still not allowed. Discovered items not handed in as exhibits in the court *a quo* are not evidence in that court nor in the appeal court.

[63] Exhibits should be contained in a separate volume of the record on appeal and not included in the record as appendixes to the witnesses' evidence who hand these exhibits in or who are cross-examined with reference to such discovered documents and where the documents are handed in as a result of the cross-examination. Exhibits, irrespective of what numbered pages they form of the record, should in addition also reflect the numerals or letters they were referred to in the court *a quo*. Thus, if an exhibit containing a number of documents is

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<sup>5</sup> *Ibid.*

admitted as such in the court *a quo*, eg 'B1' to '20', then that exhibit must be replicated in the record. It is time consuming to attempt to find the exhibit when preparing for the appeal where a witness refers to, say, exhibit 'B11' and one turns to the exhibit in the record only to find that exhibit 'B' (which may even contain more than 20 pages where the numerals refer to separate documents on the same subject matter) does not bear the markings that were used in the court *a quo*. One must then by way of inference from the evidence track down the specific document referred to. Apart from being time consuming it is inconvenient and there is no reason for this as the exhibit was numbered in the court *a quo* but which marking is not reflected in the record. It is so that some of the exhibits will be annexed to the pleadings. This does not mean they should not form part of the separate exhibits volume on appeal because it is the most effective and convenient manner to peruse a record where the witnesses in the evidence deal with exhibits during all the phases of being examined by the legal representatives.<sup>6</sup>

[18] To sum up the state of the record, the initial volumes did not contain the full record and in addition thereto contained irrelevant material such as the arguments in the court *a quo* and had many 'indistinct' notes which could easily have been cleared up with reference to the documentation available. The addition of three volumes filed shortly before the hearing of the appeal, although ensuring that everything that was before the court *a quo* was before this court, also contained the full discovery which should not have formed part of the record.

[19] Despite the fact that the record was incomplete until three court days before the hearing of the appeal and lacked vital documents such as the pre-trial order and a large number of the exhibits, no formal condonation application was brought. Counsel for the appellant apparently thought that this was not necessary as counsel for the respondent indicated that he would not raise this issue, as respondent wanted finality in the matter.

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<sup>6</sup> *BV Investments Six Hundred and Nine CC v Letty Kamati and Another SA 48/2016* delivered 19 July 2017.

When pressed by the court and when it was pointed out to counsel for the appellant that the attitude of the respondent was not the only factor that needed to be considered he explained that a junior employee was charged with the task of having the record compiled and he only became aware that the record was incomplete when this was pointed out in respondent's heads of argument, whereafter he saw to it that the additional three volumes were compiled and filed. He submitted that the additional volumes did not contain any documents of real importance. This latter submission was without merit as the additional volumes did contain exhibits material to the appeal.

[20] I strongly urge legal practitioners to heed the provisions of rule 11 of the Rules of the Supreme Court of Namibia, published in Government Notice 249/2017 and which comes into effect on 15 November 2017 which, in essence, reiterates the principles relating to the compilation of a record set out above. Taking the judgments of this court on this aspect into account coupled with the fact that the new rules deal explicitly with what a record should and should not contain, the time must fast be approaching where condonation will not be granted in respect of defective records being filed as a result of the negligence of the legal practitioner involved.<sup>7</sup> To assist legal practitioners in this regard I quote rule 11 (3), (4), (5) and (8) which reads as follows:

'11. (1) . . .

(2) . . .

(3) Bulky records must be divided into separate volumes, and each volume must not exceed 120 pages or 16 mm in thickness, and no plastic covers with holes on the binding edge with spiral plastic rings or metal rings, which bind the contents, may be used under any circumstances.

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<sup>7</sup> *Katjaimo v Katjaimo and Others* 2015 (2) NR 340 (SC) paras [21]-[25].

- (4) A copy of a record must –
- (a) include the notice of appeal, the judgment or order and the reasons given by the judge of the court appealed from; and
  - (b) contain a correct and complete index of the evidence, all documents and exhibits in the case, together with a brief statement in the index indicating the nature of the exhibits.
- (5) Mere formal documents must be omitted and no document must be set forth more than once.
- ...
- (8) Unless it is essential for the determination of an appeal the record must not contain -
- (a) heads of argument, a transcript of oral argument and opening address;
  - (b) discovery affidavits and similar documents;
  - (c) identical duplicates of any documents; and
  - (d) documents not proved or admitted.'

[21] The question that arises is whether the appellant's failure to file a complete record timeously should be condoned. In this context the following factors need to be considered:

'The importance of the case, prospects of success, the respondent's interest in the finality of the case, the convenience of the court and the avoidance of unnecessary delay.'<sup>8</sup>

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<sup>8</sup> *Channel Life* case para [45].

[22] Respondent's attitude was clear. She wanted the matter finalised and her counsel was ready to argue her case and did not want a situation, such as a postponement or a striking of the appeal without the merits being determined, which would leave the way open for appellant to endeavour to persist with the appeal on the merits at some future date. As my brethren and I had read and prepared for the appeal (although not in perfect condition) the court would not be further inconvenienced if the matter was heard and there was thus no need for further delay. Although the case does not raise issues of public interest or of public importance, it is important from the perspective of the parties. However, in view of the other factors mentioned, the consideration that the matter did not involve complicated questions of fact or law and to obtain finality we heard argument on the merits so as to determine the appellant's prospects of success.

[23] Before I deal with the prospects of success, I must indicate that had the respondent been prejudiced by the initial defective record or the lack of time to consider the additional record filed only two clear court days prior to the appeal or by the lack of a formal condonation application, the appeal would have been struck off the roll with costs without further ado. A similar result would have ensued had any of my brethren been prejudiced by the piecemeal manner in which the record has been filed.

#### The facts

[24] The court accepted the respondent's version of the facts which led it to conclude that the appellant did not prove any of his alleged counterclaims. In the result it was not necessary to deal with the issue of prescription.

[25] Counsel for appellant submits that the court *a quo* should not have rejected the

appellant's version and that it was indeed the respondent's version that should have been rejected. I do not agree. The evidence clearly supports the conclusion of the court *a quo* in this regard as I point out below.

[26] The respondent testified that the Nedbank loan came about as a result of the appellant withdrawing money from both her bank accounts in Austria and Namibia which he had to repay her. Appellant's version is that the relationship between the parties had broken down (again) and this loan was to allow her to purchase her own place to live in, in turn for her relinquishing her half share in the common property. The evidence is clear that he indeed virtually cleaned out her mentioned accounts. He had a power of attorney because, in respect of the Austrian account, the respondent relied on him to ensure that her mother's needs would be provided for as she lived in that country and in respect of the Namibian account that their children's needs would be provided for while the appellant was temporarily away in Austria. All that appellant could testify in this regard, is that he acted in terms of a power of attorney. It is also clear that the Austrian withdrawals were largely to settle his business debt in that country. He did not dispute the reasons why he had powers of attorney and gave no explanation as to why he thought he was entitled to draw money from the respondent's account for his own personal use. The fact that he assumed responsibility for the repayment of this loan also ties in with this version of the respondent. There is no evidence that he ever acted upon the alleged agreement by respondent to relinquish her share in the joint property so as to enforce this agreement. It is only raised as a justification for some of his counterclaims in this matter. To this must be added the appellant's clear dishonesty in respect of the registration of the mortgage bond in favour of Bank Windhoek.

[27] Appellant (on his own version) knew that the respondent would not consent to a bond being registered in favour of Bank Windhoek over the joint property. (Once again belying his version that she relinquished her share when purchasing her own property.) He nevertheless managed to have the title deed changed so as to refer to him as the sole owner. This he did by deposing to an affidavit stating that the title deed incorrectly reflected the parties as co-owners and that was due to a conveyancing error as he had purchased the property. Both these statements in the affidavit were to his knowledge false. On the undisputed evidence the property was purchased jointly from financing obtained through a mortgage bond taken out on a house in Austria which the parties jointly owned. As a result, the property in Namibia was registered in their names jointly. Appellant's counsel seeks to down play this conduct by the appellant as a misunderstanding between him and the conveyancer who assisted him to have the title deed changed on the basis of the consequences of the divorce in Austria. He clearly did not enlighten this conveyancer of the fact that the divorce took place prior to the acquisition of the property and that it was a joint purchase. The conveyancer testified that had he been so informed he would not have assisted the appellant to effect the change to the title deed. In any event, the money received pursuant to the registering of the bond in favour of Bank Windhoek was for his personal use.

[28] Taking all factors in reconsideration the respondent was simply a more credible witness as her version was corroborated by the circumstantial evidence and the conduct of the appellant. The court *a quo* cannot be faulted in this regard. Once this is accepted, it follows that appellant's claims to set the two bank loans off against the value of the property prior to the division fall to be dismissed. The same fate befalls the claim relating to the alleged loans to respondent to purchase furniture and a business. This is so



because the evidence of the respondent was to the effect that the furniture was purchased so as to ensure a fair division of the joint furniture on her moving out of the common property to the property she acquired. Further that the loan for a business was made to a Mr Mayerhofer as agreed by both parties and as the business failed the money was never recovered. In other words, it was a loan granted jointly so that the loss made must also be suffered jointly. Accepting respondent's evidence, this amount can likewise not be set off against the value of the joint property on division. I point out that even if it is accepted that as far as this issue is concerned there is no corroborating evidence but simply the contrasting versions of the parties. In these circumstances the appellant who bore the onus also cannot succeed. The court *a quo* thus correctly granted absolution from the instance in respect of this claim.

[29] The appellant claimed a substantial amount for 'refurbishments and renovations'. It is undisputed that if he did what he alleges he did, he did so without the consent of the respondent. This would, at most, leave him with a claim for necessary, and perhaps useful improvements, as the possessor of the property. He however did not properly quantify his claim with reference to documentation and in any event did not even attempt to limit it to necessary and/or useful refurbishments and improvements. This claim was thus also correctly not allowed and the absolution from the instance order in respect of this claim cannot be faulted.

[30] The old car bought for respondent and used by her for years to transport the children was likewise not quantified properly and hence also correctly disallowed by the court *a quo*.

[31] This leaves the question as to respondent's liability in respect of rates and taxes owing to the City of Windhoek.

#### Rates and taxes

[32] Appellant claimed one half of the amounts he allegedly paid the City of Windhoek in rates and taxes from 2001 up to date of the counterclaim.

[33] Where appellant had paid the rates and taxes in full, he is entitled to recover 50% of such claims from respondent by virtue of the fact that she is the joint owner of the property in respect whereof the rates and taxes were paid. This is a personal claim that appellant could have pursued immediately after making such payments.<sup>9</sup> Because it is a personal claim that arose upon payment of the amount which became due and owing to the City of Windhoek, it follows that these claims were subject to s 11 of the Prescription Act, Act 68 of 1969 and if such claims were not pursued within 3 years they became prescribed.

[34] The court *a quo* did not deal with this aspect because it was not clear what amounts appellant actually paid as it appeared from the rental agreements appellant concluded with tenants that the tenants were liable for such payments. Appellant could not indicate what amounts he actually paid and what amounts were recouped from tenants. Where the tenants in effect paid the rates and taxes, these amounts cannot be recouped from the respondent. They must however be deducted from the gross rental received to determine the net amount payable to respondent. Once again however appellant did not discharge the onus upon him to establish the amounts that needed to be deducted from the gross rental and the court *a quo*'s approach in this regard cannot

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<sup>9</sup> *Segell v Telekinsky* 1933 TPD 76.

be faulted.

[35] I must however point out in passing that where amounts are still owing to the City of Windhoek, respondent would be liable for half of such amounts. This is so because the City of Windhoek is equated with the 'state' for the purposes of collecting its rates and taxes and these debts owing to it only prescribe after 15 years.<sup>10</sup>

### Conclusion

[36] Whereas reasonable prospects of success (given the attitude of the respondent wanting finalisation) might have swayed me to grant the condonation application made from the bar, the fact is that there are no prospects of success. Condonation for the parlous state of the record cannot be granted. The matter thus falls to be struck from the roll with costs.

[37] Because of the further passage of time from the date of the judgment in the court *a quo* the order of the court *a quo* needs to be updated.

[38] In the result the following order is made:

1. Prayer 2 of the order of the court *a quo* is altered to read as follows:

'The defendant is ordered to render to plaintiff an account for half of the rentals received from 1 September 2015 up to date of the division stipulated in paragraph 4.6 below.'

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<sup>10</sup> *Municipal Council of Windhoek v Telecom Namibia Ltd* 2015 (3) NR 629 (SC).

2. The matter is struck from the roll with costs.

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**FRANK AJA**

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**SHIVUTE CJ**

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**SMUTS JA**

APPEARANCES:

APPELLANT:

Chris Brandt

Of Chris Brandt Attorneys

RESPONDENT:

Stephen Vlieghe

Of Koep & Partners