



**REPUBLIC OF NAMIBIA**

*Special Interest*

**CASE NO. I 1775/2009**

**IN THE HIGH COURT OF NAMIBIA**

In the matter between:

**LUCIA DE WAAL**  
(Born BEUKES)

**PLAINTIFF**

and

**BURTON BAIN BRUCE DE WAAL**

**DEFENDANT**

**CORAM:** DAMASEB, JP

Heard: 28<sup>TH</sup> JULY 2011

Delivered: 28<sup>TH</sup> JULY 2011

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**DAMASEB, JP:** [1] This matter was enrolled for an initial case management conference on 28 July 2011 at 8:30. The notice, duly communicated to both parties, is dated 28 June 2011. The notice states:

**“NOTICE IN TERMS OF RULE 37(3):  
INITIAL JUDICIAL CASE MANAGEMENT CONFERENCE**

1. In terms of rule 37(3) of the Rules of the High Court the initial case management conference shall take place in **Court Room B** at **8:30** on **28<sup>th</sup> July 2011** before the **Hon. Mr Justice Damaseb, Judge-President** in open Court.
2. The attention of parties and legal representatives, if applicable, is drawn to subrules (4) and (5) and, if applicable subrule (6) (matrimonial case) of rule 37.
3. The parties and legal practitioners, if applicable, must fulfill all the requirements of the JCM rules.
4. The attention of the parties and/or their legal practitioner(s) is further drawn to Rule 1B(d) and Rule 37(16).”

[2] On 28 July 2011, Mr Kwala appeared for the plaintiff. The defendant did not appear, either personally or by a legal practitioner. That was to be expected because, as stated by Mr Kwala in an affidavit filed of record on 27 July 2011;

“I submit that I am unable to file a case management report due to the fact that the defendant’s attorney’s failed to respond to our several requests with regard to a meeting to the compilation of the case management report see hereto annexed letters to the legal representative for the defendant marked annexure “A” and “B” respectively.

As a result of the reason mentioned above, I am not in a position on behalf of plaintiff to proceed with the matter as far as the case management is concerned.

In premises I wish to request the Honourable Court for leave to postpone the matter to the next case management conference to enable me to obtain further instructions.”

[3] Mr Kwala’s affidavit has annexed to it 2 letters, respectively dated 6 July 2011 and 18 July 2011 inviting the legal practitioner of the defendant to meet for purposes of compiling a report in terms of Rule 37(4), (5) and (6).

[4] Mr Kwala confirmed under oath that the defendant’s legal practitioners of record did not respond to his requests. Accordingly, they are in breach of Rule 37(16) which states:

- “(16) Without lawful excuse, if a party or his or her counsel –
- a) fails to attend a case management conference, a status hearing, any additional case management conference or a pre-trial conference;
  - b) fails to participate in the creation of a case management report or parties’ proposed pre-trial order;
  - c) fails to obey a case management order or the managing judge’s pre-trial order;
  - d) fails to participate in good faith in the case management or pre-trial processes;
  - e) fails to comply with the court deadline or obligations under the judicial case management rules,

the managing judge may enter such orders as are just, including, but not limited to, the following –

- i) an order refusing to allow the non-compliant party to support or oppose designated claims or defences, or prohibiting that party from introducing designated issues in evidence;

- ii) an order striking out pleadings or part thereof, including any defence, exception or special plea;
- iii) an order dismissing a claim or entering a final judgment; or
- iv) an order requiring the non-compliant party or his or her counsel to pay the opposing party's costs caused by the non-compliance."

[5] The business of this Court will come to a halt if litigants flout the case management rules. The objectives of case management and obligations of parties and their lawyers under the new rules, are so clearly set out in the Rules. I will repeat them here for the benefit of all users of the courts' services and their practitioners:

"OBJECTIVES OF CASE MANAGEMENT

- 1A. (1) The objectives of case management of an action or application in these rules are –
- (a) to ensure the speedy disposal of any action or application;
  - (b) to promote the prompt and economic disposal of any action or application;
  - (c) to use efficiently the available judicial, legal and administrative resources;
  - (d) to provide for a court-controlled process in litigation;
  - (e) to identify issues in dispute at an early stage;
  - (f) to determine the course of the proceedings so that the parties are aware of succeeding events and stages and the likely time and costs involved;
  - (g) to curtail proceedings;
  - (h) to reduce the delay and expense of interlocutory processes;
  - (i) to separate the adjudication or interlocutory motions from that of the merits to be heard at the trial;

- (j) to provide for the better and more practical and more timely production of evidence by expert witnesses;
- (k) to provide for the production or discovery of documents at a more convenient, practical and earlier time;
- (l) to ensure the involvement of the parties before the initial case management conference by the preparation of a case management report; and
- (m) to identify as soon as practicable firm dates for particular steps as well as for the trial of an action or hearing of an opposed motion.

(2) The objectives of case management set out in this rule apply to rules 35 and 36 of the Rules.

#### OBLIGATIONS OF PARTIES AND THEIR LEGAL PRACTITIONERS

- 1B. The parties to an action or opposed motion and their legal practitioners, if they are represented, must –
- (a) assist the managing judge in curtailing the proceedings;
  - (b) comply with rule 37 and other rules regarding judicial case management;
  - (c) comply with any direction given by the managing judge at any case management conference or status hearing; and
  - (d) attend all case management conferences, pre-trial conferences and status hearings caused to be arranged by the managing judge.”

[6] The case management rules of this Court represent a radical departure from the civil process of old. Litigation is now no longer left to the parties alone. The resolution of disputes is now as much the business of the judges of this Court as it is of the parties. Courts exist to serve the public as a whole and not merely the parties to a particular dispute before Court at a given time. That is not possible if

case management directives issued by the Court are not respected. Parties and their legal practitioners must realise that the Courts are going to impose the sanctions contemplated in sub-rule 16.

[7] I am satisfied that the present case warrants the imposition of the sanctions provided by the Rules.

[8] Accordingly I make the following orders:

- i) The defendant's defence to the plaintiff's claim is dismissed.
- ii) The plaintiff is granted leave to set the matter down in motion court as an unopposed divorce and to move for the relief sought in the combined summons.
- iii) Costs are awarded to the plaintiff.
- iv) The registrar is directed to return the file to the managing judge after the plaintiff had obtained the order for restitution of conjugal rights.

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**DAMASEB, JP**



ON BEHALF OF THE PLAINTIFF:

Mr F Kwala

**Of:**

**Kwala & Company Incorporated**

ON BEHALF OF THE DEFENDANT:

No Appearance

**Of:**

**Shikongo Law Chambers**