



**CASE NO.: I 1225/2010**

**IN THE HIGH COURT OF NAMIBIA**

In the matter between:

**ROSALIND BEATRICE LOSPER**

**APPLICANT**

**AND**

**SAREL JOHANNES LOSPER**

**1<sup>ST</sup> RESPONDENT**

**ANNA LOSPER**

**2<sup>ND</sup> RESPONDENT**

**In re:**

**CASE NO.: I 1225/2010**

**SAREL JOHANNES LOSPER**

**PLAINTIFF**

**AND**

**ROSALIND BEATRICE LOSPER**

**DEFENDANT**

**AND**

**CASE NO.: I 2195/2010**

**ROSALIND BEATRICE LOSPER**

**PLAINTIFF**

**AND**

**ANNA LOSPER**

**DEFENDANT**

**CORAM: SHIVUTE, J**

Heard on: 2011 NOVEMBER 25

Delivered on: 2011 NOVEMBER 28

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**JUDGMENT**

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**SHIVUTE, J:** [1] On 25 November 2011 I heard arguments on the application for consolidation of actions. The application was dismissed and I indicated that reasons would be given today. I indicated also that the order to costs would be made today. The following are the reasons and the order as to costs.

[2] The applicant has brought an application by notice of motion for consolidation of case numbers I 2195/2010 and I 1225/2010 under one case number and to be heard at the same time. The application was founded on the

affidavit of Applicant's counsel. The Application was opposed by the Respondent and counsel for the Respondent deposed to an opposing affidavit.

[3] It is stated in the affidavit deposed to on behalf of the Applicant that the Applicant is the Defendant in divorce proceedings instituted against her by her husband in case no I 1225/2010 and she is the Plaintiff in case no I 2195/2010 which she instituted against a third party who is alleged to have committed adultery with her husband. It is further alleged on behalf of the Applicant that such adulterous relations still subsists.

[4] Applicant argued that there is a satisfactory factual basis for the consolidation of the two matters and this would bring about justice and expeditious finalization of litigation and will further minimize the issue of legal costs.

[5] Respondent on the other hand argued that the Applicant had ample opportunity to apply for the consolidation of these matters than creating own urgency by lodging the application to consolidate the two matters on short notice when the divorce hearing is about to commence.

[6] Respondent further argued that the Applicant had failed to provide sufficient and proper reasons as to why these two matters must be heard simultaneously. Counsel for the Respondent argued again that the Respondent in case no. 2195/2010 has no interest in the divorce matter. It was further argued that Respondent does not have sufficient time to prepare for hearing of the matter that is sought to be consolidated with the divorce action on such

short notice. Should the application be granted Respondent would be prejudiced and no balance of convenience would favour any of the parties in this matter because the matter would have to be postponed for the Respondent to prepare for the hearing of the consolidated matters.

[7] Consolidation is governed by Rule 11 of the Rules of this Court. The overriding test in regard to consolidation of actions is convenience to avoid multiplicity of actions and attendant costs.

[8] The divorce matter is set down for hearing on 28 – 29 November 2011. The consolidation application was moved on 25 November 2011. Counsel for the Applicant argued that the reasons why the Application was brought late was because the Applicant gave instructions for consolidation on short notice. Whether or not actions should be consolidated appears to me to be a legal issue. As such it is for counsel to advise the client rather than the client giving instructions to counsel to move an application for consolidation. This argument cannot therefore assist the application. Furthermore the parties in their case management report dated 08 June 2011 in terms of Rule 37 (5) of the Rules of this Court made an undertaking that no interlocutory motions were foreseen “at this stage”. Although the parties astutely qualified the undertaking with “at this stage”, my view is that the Applicant left it until late to apply for consolidation. As I said before, whether or not to apply for consolidation is really a legal question at the call of the legal practitioner rather than the client.

[9] The purpose of case management is to shorten the proceedings and iron out among others all interlocutories before the trial date is set down. The parties need also to respect the undertaking they made in the initial case management report. In the circumstances I am of the opinion that no convenience would be served should the application be granted since it is made on short notice and this would not bring about justice and an expeditious finalization of the matter since there is a real possibility that the Respondent may move an application for a postponement of the hearing scheduled for 28 November 2011 should the consolidation application be successful. Given the short notice within which to prepare for the hearing, the application for a postponement if moved may well be granted. Counsel for the Applicant in effect conceded that the hearing of the matter may be postponed should the application for consolidation be granted. It was on that basis, if I understood her correctly that counsel was prepared to tender costs of occasions by the postponement.

[10] I finally deal with the issue of costs. The Respondent had pressed for costs order on the attorney and client scale. Although the application was brought late, I am not persuaded that the facts of this application call for punitive order. I accordingly decline to make such order of costs. The application is dismissed with costs.

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**SHIVUTE, J**

**ON BEHALF OF THE PLAINTIFF** Ms Indongo

**Instructed by:** Conradie & Damaseb

**ON BEHALF OF RESPONDENT** Mr Horn

**Instructed by:** MB De Klerk & Associates