



HIGH COURT OF NAMIBIA MAIN DIVISION, WINDHOEK

JUDGMENT

Case no: I 3614/2013

In the matter between:

**STANDARD BANK NAMIBIA LIMITED**

**PLAINTIFF**

And

**RONNIE GERTZE**

**DEFENDANT**

**Neutral citation:** *Standard Bank Namibia Limited v Gertze* (I 3614/2013) [2015]  
NAHCMD 77 (31 March 2015)

**Coram:** PARKER AJ

**Heard:** 18 March 2015

**Delivered:** 31 March 2015

**Flynote:** Practice – Applications and motions – Interlocutory application – Court held that rule 32(9) and (10) of the rules are peremptory – Consequently failure to comply with rule 32(9) and (10) is fatal and interlocutory application falls to be struck from the roll.

**Summary:** Practice – Applications and motions – Interlocutory application – Applicant (defendant) launched application in terms of rule 61(1) of the rules of court – Applicant failed to comply with rule 32(9) and (10) which is peremptory – Such failure is fatal – Consequently, application is struck from the roll.

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**ORDER**

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- (a) The application in terms of rule 61 of the rules is struck from the roll.
- (b) Each party to pay its or his own costs.
- (c) The plaintiff's legal practitioner and the defendant in person (if unrepresented) must at 08h30 on 30 April 2015 attend a status hearing to determine the further conduct of the matter.

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**JUDGMENT**

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PARKER AJ:

[1] It is one of the cases where a brief background to the instant proceeding is apt. The plaintiff instituted action in which it claimed the relief set out in the particulars of claim. The combined summons was issued from the registrar's office on 18 October 2013. The defendant filed his plea on 15 January 2014. The plaintiff filed a Filing Notice, enclosing 'Plaintiff's Amended Particulars of Claim' on 18 July 2014. On 23 July 2014 the defendant launched an application in terms of Rule 61 of the rules of court on the basis that 'in terms of Rule 61 read with Rule 52(4), "plaintiff's amended particulars of claim" served on the applicant (i.e. defendant) on 21 July 2014, constitutes an irregular and/or improper step, and is hereby set aside'.

[2] Meanwhile, the defendant applied on 23 July 2014 to the Director: Legal Aid (in the Ministry of Justice) for legal representation. To date the defendant has not received legal representation from the Director: Legal Aid. That being the case, the defendant appears in person. Mr Van Vuuren represents the plaintiff.

[3] The plaintiff has raised a preliminary point to the launching of the rule 61 application. The bone and marrow of the basis of the preliminary point is that the defendant launched the rule 61 application without complying with rule 32(9) and (10) of the rules, when that application is an interlocutory proceeding within the meaning of rule 32 of the rules. Mr Van Vuuren argued the point *in limine*, and concluded that in the circumstances the defendant's rule 61 application is a nullity and stands to be dismissed with costs, including costs of one instructing counsel and one instructed counsel. The defendant did not make any substantial submission in response to Mr Van Vuuren's submission.

[4] Rule 32 provides:

- '(9) In relation to any proceeding referred to in this rule a party wishing to bring such proceeding must, before launching it, seek an amicable resolution thereof with the other party or parties and only after the parties have failed to resolve their dispute may such proceeding be delivered for adjudication by the court.
- (10) The party bringing any proceeding contemplated in this rule must, before instituting the proceeding, file with the registrar details of the steps taken to have the matter resolved amicably as contemplated in subrule (9), without disclosing privileged information.'

[5] In holding that rule 32(9) and (10) are peremptory provisions, I reasoned in *Mukata v Appolus* (I 3396/2014) [2015] NAHCMD 54 (12 March 2015), para 6 thus:

'Considering the use of the word "must" in Rule 32(9) and (10) and the intention of the rule maker as set out in Rule 1(2) concerning the overriding objective of the rules (see *The International University of Management v Torbitt* (LC 114/2013) [2014] NALCMD 6 (20 February 2014)), I conclude that the provisions of rule 32(9) and (10) are peremptory, and non-compliance with them must be fatal.'

[6] In *Mukata*, having found that the plaintiff had failed to comply with rule 32(9) and (10), the application for summary judgment (ie the interlocutory application which the plaintiff had launched) was struck from the roll. By a parity of reasoning, I should strike the rule 61 application, which is also an interlocutory proceeding, from the roll. I respectfully decline Mr Van Vuuren's invitation that I dismiss the application.

[7] Furthermore, in *Mukata*, para 7, I denied the defendant his costs, albeit he was successful, for the following reasons:

[7] One last word; in keeping with judicial case management process in which parties and counsel are expected to cooperate among themselves and with the court in order to attain expeditious and just disposal of cases by the court, the defendant's legal practitioner should have at an appropriate judicial case management conference requested the court not to set down the interlocutory application for hearing because 32(9) and (10) has not been complied with. Counsel should not wait until during the hearing to argue that rule 32(9) and 10 has not been complied with ... For this reason, even though the defendant has been successful, he should be denied his costs.'

[8] In the instant proceeding the rule 61 application was launched as long ago as 23 July 2014 and was set down during a status hearing held on 30 October 2014 for hearing on 18 March 2015. Counsel should not wait until during the hearing to argue that rule 32(9) and (10) has not been complied with by the defendant. For this reason, just as in *Mukata*, the plaintiff should be denied its costs.

[9] In the result, I make the following order:

- (a) The application in terms of rule 61 of the rules is struck from the roll.
- (b) Each party to pay its or his own costs.
- (c) The plaintiff's legal practitioner and the defendant in person (if unrepresented) must at 08h30 on 30 April 2015 attend a status hearing to determine the further conduct of the matter.

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C Parker  
Acting Judge

APPEARANCES

PLAINTIFF :       A Van Vuuren  
                  Instructed by Behrens & Pfeiffer, Windhoek

DEFENDANT:       In Person