



HIGH COURT OF NAMIBIA MAIN DIVISION, WINDHOEK

REASONS

Case no: I 305/2016

In the matter between:

HERMIAS STRAUSS

FIRST DEFENDANT/APPLICANT

MARTINA DAFFINA STRAUSS

SECOND DEFENDANT/ APPLICANT

JOHANN STRAUSS

THIRD DEFENDANT/ APPLICANT

and

RUDOLF JANSEN VAN VUUREN

FIRST PLAINTIFF/RESPONDENT

KANAÄN INVESTMENTS

CLOSE CORPORATION

SECOND PLAINTIFF/RESPONDENT

Neutral citation: *Strauss v Van Vuuren* (I 305/2016) [2017] NAHCMD 167
(21 June 2017)

Coram: OOSTHUIZEN J

Heard: 28 March 2017

Delivered: 24 April 2017

Reasons: 21 June 2017

ORDER

Having heard **Mr Strydom** for the applicants and **Mr Obbes** for the respondents on 28 March 2017, and having considered the documents filed of record thoroughly as well as the case management orders together with the proposed case plan ordered on 4 April 2016 and the case management report filed 16 June 2016 –

IT IS ORDERED THAT –

1. The applicants'/defendants' application is dismissed.
2. Applicants'/defendants' to pay the costs of the respondents'/plaintiffs', which costs to include one instructing and one instructed counsel, and that these costs will **not** be capped by the Rule 32(11) capping.
3. The matter is postponed to Monday, 26 June 2017 at 14h00 for a status hearing.

REASONS

OOSTHUIZEN J:

Introduction

[1] The applicants' instituted and interlocutory application seeking the following relief:

'1. Condoning the applicants/defendants' late filing of their notice of intention to amend their plea in terms of rule 55(1) read with paragraph 1 of the order of court delivered on 22 September 2016 as more fully set out in appendix "A" attached hereto.

1. Consequential to the relief sought in paragraph 1 above,

1.1 condoning the applicants/defendants' late filing of their counterclaim and joinder of 3rd and 4th parties in terms of rule 55(1) read with paragraph 1 of the order of the court delivered on 22 September 2016;

1.2 granting the applicants/defendants leave by virtue of Rule 48(1) to serve and file a counterclaim against the respondents as more fully set out in appendix "B" attached hereto;

1.3 granting the applicants/defendants leave by virtue of Rule 50(3) to serve and file third and fourth party notices against Messrs Francois Erasmus & Partners as well as Mr Paul Botha as more fully set out in appendix "C" attached hereto

2. Costs of the application (only in the event of it being opposed in the event of which the respondent should be ordered to pay the costs of this application).

3. Further and alternative relief.'

[2] The respondents opposed the application on various grounds. The court deemed it superfluous to deal with all but one.

Prospects of Success

[3] In *Petrus v Roman Coatholic Archdiocese*¹ the Namibian Supreme Court held that:

'In determining whether to grant condonation, a court will consider whether the explanation is sufficient to warrant the grant of condonation, and will also consider the litigants prospects of success on the merits, . . . '

[4] Rule 56(3) of the Rules of the High Court provides that the Managing Judge may, on good cause shown, condone a non-compliance with the rules and court orders.

¹ 2011 (2) NR 637 (SC) at 640[10].

Good cause is twofold. A reasonable explanations for the delays and non-compliance together with the issue of prospects of success.²

[5] Defendants/applicants failure to address their prospects of success adequately, if at all, put paid to their application for the relief sought in their application.

GH Oosthuizen
Judge

² *Quenet Capital (Pty) Ltd v Transnamib Holdings Limited* (I 2679/2015) [2016] NAHCMD 104 (8 April 2016), paragraph [15].

APPEARANCES

PLAINTIFFS/RESPONDENTS:

Mr Obbes

Instructed by Francois Erasmus & Partners,
Windhoek

DEFENDANTS/APPLICANTS:

Mr Strydom

Instructed by Engling, Stritter & Partners,
Windhoek