



HIGH COURT OF NAMIBIA MAIN DIVISION, WINDHOEK
JUDGMENT

Case no: I 1745/2016
I 3896/2012

In the matter between:

EDEN IMPORT AND EXPORT CC

APPLICANT

and

ADAM DOUGLAS PIPER

RESPONDENT

Neutral citation: *Eden Import and Export CC v Piper* (I 1745/2016 & I 3896/2012)
[2017] NAHCMD 286 (12 October 2017)

Coram: OOSTHUIZEN J

Heard: 30 MAY 2017

Delivered: 12 OCTOBER 2017

Flynote: Respondent compelled to pay previous adverse costs orders, including interest, prior to proceeding with any form of litigation in relation to a specified judgment. Respondent barred from instituting relevant proceedings, unless and until all adverse costs orders and interest are paid in relation to aforementioned judgment. Limitation on costs provided for in Rule 32 (11), not applicable in the instance.

Summary: Respondent showed to be non-compliant with previous costs orders, dilatory, vexatious, oppressive and mala fide in his conduct. Respondent's conduct merits sanctions to pay adverse orders before proceeding with related litigation and to bar the institution thereof until adverse costs orders are paid in full.

The notices in terms of Rule 66 (1) (c) (instead of answering affidavits) are disallowed, due to late filing and no condonation sought.

Rule 32 (11) not applicable to present applications in the discretion of the Court. The court has a discretion to grant costs on a higher scale in interlocutory matters, than the limitation provided for. In order to exercise such a discretion the following considerations should be weighed –

- (a) The Importance and complexity of the matter.
- (b) Whether the parties are litigating at full stretch.
- (c) The parties must be litigating with equality of arms.
- (d) It will be a weighty consideration whether both parties crave a scale above the upper limit provided by the Rule.
- (e) The reasonableness or otherwise of a party during discussions contemplated in rule 32 (9).
- (f) The dispositive nature of the interlocutory motion.
- (g) The number of interlocutory applications moved in the life of the case; the more they become the less likely it is that the court will countenance exceeding the limit of the rules.
- (h) Whether both parties command substantial resources.

(i) The rationale of the rule is to discourage a multiplicity of interlocutory motions which often increase costs and hamper the court from speedily getting to the real disputes in a case.

(j) The party who seeks a higher scale bears the onus and must make out a clear case therefor.

(k) In an interlocutory application even where the court in its discretion decides to allow costs above the limitation in Rule 32 (11), excessive costs is unjustified.

In exercising its discretion not to curb costs in terms of Rule 32 (11) the court has already allowed a higher scale in interlocutory matters and is cautious to exceed the limitation and rationale of Rule 32 (11) excessively as it will be unjustifiable. The court is faced with a striking duplication between the applications and relief claimed. Furthermore the court has to accept, having had regard to the wording of prayer 8 in both notices of motion, that two bills of costs will be presented to the taxing officer. One for the application under the 2012 case and one for the application in the 2016 case. Both instructing and instructed counsel remained the same in both applications.

ORDER

Having heard counsel for the applicant and counsel for the respondent –

IT IS ORDERED THAT:

1. The respondent shall pay all the adverse costs orders which the applicant obtained against the respondent in the Court under case number I 3896/2012 including interest thereon prior to proceeding with any form of litigation against the applicant in the Court in relation to the judgment of this Court dated 8 February 2013 under case number I 3896/2012.

2. The respondent is barred from instituting any proceedings against the applicant in this Court in relation to the judgment of this Court dated 8 February 2013 under case number I 3896/2012 unless and until all the adverse costs orders which the applicant obtained against the respondent in the Court under case number I 3896/2012 have been fully paid including interest thereon.
3. The respondent shall pay the applicant's costs occasioned by the application in case number I 3896/2012 filed on 6 September 2016 on a party and party scale, such costs to include the costs of one instructing and one instructed counsel, free from the limitation imposed by Rule 32 (11).
4. The respondent shall pay the applicant's costs occasioned by the application in case number I 1745/2016 filed on 28 October 2016 on a party and party scale, such costs to include the costs of one instructing and one instructed counsel on a bill of costs to be presented to the taxing officer which shall allow for reasonably reduced time in view of copying from the application filed on 6 September 2016, with regard to refreshing of both instructing and instructed counsel, free from the limitation imposed by Rule 32 (11).

JUDGMENT

OOSTHUIZEN J:

[1] The Court has two applications for judgment before it. Both cases bear action numbers, and they are I 3896/2012 and I 1745/2016.

[2] The application under case number I 3896/2012 was filed on 6 September 2016 and the application under case number I 1745/2016 was filed on 28 October 2016.

[3] Prayers 6, 7 and 8 in both applications are identical and are to be decided by this Court.

[4] They read as follows:

‘6. The respondent shall pay all the adverse costs orders which the applicant obtained against the respondent in the Court under case number I 3896/2012 including interest thereon prior to proceeding with any form of litigation against the applicant in the Court in relation to the judgment of this Court dated 8 February 2013 under case number I 3896/2012.

7. The respondent is barred from instituting any proceedings against the applicant in this Court in relation to the judgment of this Court dated 8 February 2013 under case number I 3896/2012 unless and until all the adverse costs orders which the applicant obtained against the respondent in the Court under case number I 3896/2012 have been fully paid including interest thereon.

8. The respondent shall pay the applicant’s costs occasioned by this application on the scale of attorney and own client, such costs to include the costs of one instructing and one instructed counsel.’

[5] On 20 January 2017 the parties in both applications filed a Status Report under case number I 3896/2012 as a result of a Notice of Status Hearing issued under the same case number subsequent to its re-allocation from Masuku, J to Oosthuizen, J. The aforesaid Status Report was signed and approved by the respective legal practitioners acting for the parties in both matters and read as follows:

‘1. The above mentioned matter between Eden Import and Export CC // Adam Douglas Piper under case number I 3896/2012 used to be docket allocated to Justice Masuku and is related to the matter between Adam Douglas Piper // Eden Import and Export CC under case number I 1745/2016 which last mentioned matter has been docket allocated to Justice Oosthuizen from the onset.

2. In terms of the court order dated 1 December 2016 and the notice of status hearing dated 27 December 2016 the matter under case number I 3896/2012 has been transferred and docket allocated to Justice Oosthuizen so that both matters (being related matters) be docket allocated to the same managing judge (Justice Oosthuizen).

3. Whereas these two matters are related and whereas both matters are now docket allocated to Justice Oosthuizen, this status report deals with both matters. For convenience the parties are referred to as Eden and Piper.

4. In respect of case number I 3896/2012:

4.1 Eden instituted action against Piper and Eden obtained a default judgment against Piper during February 2013.

4.2 During September 2014 Piper instituted a substantive application against Eden concerning the default judgment. Eden launched security for costs procedures and after the required security for costs was not paid Piper's aforesaid application was dismissed.

4.3 During February 2016 Piper instituted another substantive application against Eden concerning the default judgment. Eden again launched security for costs procedures.

4.4 Prayer 1, 2, 3, 4 and 5 of Eden's last application launched under Eden's notice of motion dated 6 September 2016 (forming part of Eden's security for costs procedures) have been resolved and disposed of by virtue of the court order dated 9 November 2016.

4.5 Prayer 6, 7 and the special costs scale sought by Eden in prayer 8 of Eden's aforesaid application remain unresolved and must be determined.

4.6 A date for the hearing of the aforesaid unresolved issues would have been set during a chamber meeting held on 1 December 2016 before Justice Masuku.

4.7 Instead, on 1 December 2016, the matter was transferred to Justice Oosthuizen.

5. In respect of case number I 1745/2016:

5.1 Piper instituted action against Eden concerning the above mentioned default judgment.

5.2 Eden launched security for costs procedures.

5.3 Eden's application launched under Eden's notice of motion dated 28 October 2016 (forming part of Eden's security for costs procedures) was set down for hearing on 24 November 2016 by virtue of the court order dated 14 November 2016.

5.4 Meanwhile, the action was withdrawn by Piper by virtue of a notice of withdrawal of action dated 21 November 2016.

5.5 Despite the aforesaid withdrawal, prayer 6, 7 and 8 of Eden's application launched under Eden's notice of motion dated 28 October 2016 remain unresolved and required determination on 24 November 2016.

5.6 Notwithstanding the aforesaid, on 21 November 2016 the court mero motu and without hearing any of the parties, ordered that the matter is finalised and that it is removed from the case management roll and that Eden's aforesaid application is likewise removed from the roll.

6. On 29 November 2016 the parties, their instructing as well as their instructed legal practitioners met and lengthy settlement negotiations were conducted in order to settle the unresolved disputes between the parties including the unresolved disputes referred to above. The parties could not come to an agreement.

7. In the premises:

7.1 In case number I 3896/2012 prayer 6, 7 and the special costs scale sought by Eden in prayer 8 of Eden's application dated 6 September 2016 must be determined.

7.2 In case number I 1745/2016:

7.2.1 The court order dated 21 November 2016 should be rescinded by the court mero motu in terms of rule 103 (1) (a) as was briefly discussed during a chamber meeting that was held with Justice Oosthuizen on 25 November 2016.

7.2.2 Prayer 6, 7 and 8 of Eden's application dated 28 October 2016 must be determined.

7.3 In both matters:

7.3.1 The delivery of answering papers, replying papers and heads of argument must be fixed.

7.3.2 A hearing date must be set for the above mentioned unresolved issues (paragraph 7.1 and 7.2.2).

7.3.3 Due to the nature of the issues involved and the volume of the applications filed of record, the parties suggest that an entire morning be allocated for the hearing.'

[6] In the application under case number I 1745/2016 and on 14 November 2016 the Court ordered that –

- '1. Plaintiff/respondent shall file his replying affidavit on or before 21 November 2016.
2. Defendant/applicant shall file its answering affidavit on or before 23 November 2016.
3. The matter is postponed to Thursday, 24 November 2016 at 09h00 to hear submissions on the notice of motion and the proposed draft order on which respondent raised objections with reference to paragraphs 6 and 7, and the scale of costs in paragraph 8.'

[7] In the same 2016 application and on 21 November 2016 in the absence of parties, the Court made the following order in chambers:

'Having regard to the Notice of Withdrawal of Action, filed on 21 November 2016, whereof a copy is attached to this order –

IT IS NOTED THAT:

Plaintiff withdrew his action against defendant and tendered the wasted costs.

IT IS ORDERED THAT:

1. The matter is finalised and is removed from the case management roll.
2. The interlocutory matter for security for costs, payment of previous costs orders and barring, which was set down for argument on 24 November 2014 at 09h00, is likewise removed from the roll.'

[8] On 24 January 2017, after the 2016 application was postponed from 23 January 2017 (and in terms of Rule 103 (1) (a)), the Court rescinded the Court Order of 21 November 2016 and re-instated the 2016 application.

[9] On 6 March 2017 and on the request of respondent's legal practitioner's, Erasmus & Associates, the Court in both applications, amended its order of 24 January 2017 and granted extra time for the filing of answering and replying affidavits by the parties. Respondent ("Piper") was given time to file his answering affidavit on or before 16 March 2017. Piper had to file his heads of argument on or before 25 April 2017.

[10] Respondent in both applications never filed answering affidavits and only on 3 April 2017 filed notices in terms of Rule 66 (1)(c) in both applications raising issues of law to be argued at the hearing set down on 18 May 2017.

[11] Applicant in both applications took the stance that, inter alia, respondent's Rule 66 (1) (c) notices was only delivered on 3 April 2017, 11 (eleven) court days after the last extended dates on which his answering affidavits had to be delivered, without a condonation application for their late delivery. Applicant submitted that the Rule 66 (1) (c) notices are not properly before court for consideration and should be ignored.

[12] The aforesaid notices inter alia raise the following issues:

12.1 The summons and consequent default judgment obtained by applicant under case number I3896/2012 is null and void ab initio, having the effect that all subsequent steps taken by the applicant, including the present application should be set aside.

12.2 Applicant lacks the necessary locus standi in seeking security from respondent.

12.3 The relief sought by the applicant is wrong in law and incompetent.

12.4 Applicant's application for security is misconceived and bad in law.

12.5 The relief sought in prayers 6 and 7 of the notices of motion is sui generis to an application for security for costs and should not have formed part of applicant's application but should have been dealt with in a substantive separate application.

12.6 The prayers for cost are incompetent in law.

12.7 Applicant did not mitigate its damages.

12.8 All costs orders to be on a Magistrate's Court scale.

12.9 In any event, and in terms of Rule 32 (11), the costs that may be awarded to a successful party in any interlocutory proceeding may not exceed N\$20 000.00.

[13] Apart from the costs issue and the scale thereof, which respondent in any event is entitled to address, the other issues raised in the Rule 66 (1) (c) notices are a transparent attempt to lure this court into deciding issues which are germane to the latest application under case number I 3896/2012 and the withdrawn action under case number I 1745/2016.

[14] Rule 66 (1) (b) and (c) provides that:

“66. (1) A person opposing the grant of an order sought in an application must –

(b) within 14 days of notifying the applicant of his or her intention to oppose the application deliver his or her answering affidavit, if any, together with any relevant documents, except that where the Government is the respondent, the time limit may not be less than 21 days; and

(c) if he or she intends to raise a question of law only, he or she must deliver notice of his or her intention to do so within the time stated in paragraph (b), setting out such question.”

[15] A notice in terms of rule 66 (1) (c) is intended to be directed to the application before court at the time and the relief sought therein. In particular, it is intended to be directed to whether, on the basis of the founding papers before court, the applicant is entitled to the relief sought. When a respondent delivers a Rule 66 (1) (c) notice it is basically treated as an exception is treated in action proceedings. The factual allegations contained in the founding papers are accepted to be true.

[16] Respondent's Rule 66 (1) (c) notices were delivered out of time, instead of answering affidavits, and without any attempt to seek condonation.

[17] There are no answering affidavits (evidence from respondent) in front of the court.

[18] The Rule 66 (1) (c) notices are not properly before court for consideration and are disallowed.

[19] The court then is left to decide the issues to be decided on the applicant's papers.

PRAYERS 6 AND 7

[20] Prayers 6 and 7 of the notices of motion are directed to compel the respondent to pay all adverse costs orders under case I 3896/2012 and interest thereon prior to proceeding with any litigation against the applicant relating to the judgment of this court on 8 February 2013 and to bar the respondent from instituting any proceedings against the applicant relating thereto unless and until same is paid.

[21] The conduct of the respondent complained of by the applicant is contained in applicant's uncontested affidavit in support of its notice of motion filed on 6 September 2016 under case I 3896/2012 with specific reference to pages 324 to 362 (paragraphs 25 to 105) of the indexed record.

[22] In summary, paragraphs 102 and 104 are quoted –

'102. I submit that, having regard to the respondent's conduct, the court should exercise its discretion in furthermore granting prayers 6 and 7 of the notice of motion to which this affidavit is attached. The respondent delayed for years to challenge the acknowledgement of debt and/or the default judgment. When the respondent does institute a proceeding (as the respondent's first and second Namibian applications), he fails to prosecute such proceeding to finality. The respondent is in default and contempt of various orders of this Court. One of the respondent's defaults already forced the applicant to take steps to enforce one of this Court's orders in a foreign jurisdiction. This in itself was a costly exercise for the applicant. The respondent opposed the initial South African action, failed to deliver an affidavit resisting summary judgment, failed to set security in the alternative, instead, the respondent raised a number of technical points, caused the summary judgment application to be postponed, got another adverse costs order against him, after summary judgment has been entered against him delayed in

taking further steps which resulted in the late filing of an application for leave to appeal, instituted a stay application against the applicant without tendering security for such stay. When the applicant attempted to execute the summary judgment in South Africa, the respondent caused his wife and bank to launch interpleader proceedings against certain items that were attached. In one affidavit the respondent's wife, under oath, claimed that she was the owner of a certain motor vehicle. It turned out that she was not the owner of the vehicle and she thereafter stated that she made a bona fide mistake when she stated that she was the owner of the vehicle. The respondent obtained quotations from Weylandt's Warehouse for items purchased some time ago and forged the quotations into invoices in his wife's name in order to support a claim of ownership by his wife in respect of certain items that were attached. Back to Namibia, instead of adhering to this Court's orders in respect of the respondent's first Namibian application, the respondent, in total disregard and contempt of court orders, launches a second Namibian application, basically identical to the first Namibian application and thereafter taking no steps to prosecute the application to finality. I reiterate that this amounts to an abuse of this Court's process. In the second Namibian application the respondent alleges that he has now raised the required funds for security, yet, when the time comes to provide the said security, the respondent instead tenders unknown and unidentified cattle belonging to a third party as security, causing the applicant to incur further legal costs in launching this application. On top of it all, the respondent is a peregrinus of this Court, abusing this Court's process and having no respect for the orders of this Court or its procedure.

104. I submit that the conduct of the respondent in this matter is vexatious, oppressive and mala fide and the respondent should not be allowed to proceed with any form of litigation against the applicant unless he paid the respondent the adverse costs orders obtained against him, and the respondent should be barred from instituting any proceedings against the applicant in this Court in relation to the judgment of this Court dated 8 February 2013 under case number I 3896/2012 unless and until all the adverse costs orders which the applicant obtained against the respondent in the Court under case number I 3896/2012 have been fully paid including interest thereon.'

[23] Paragraphs 115 and 117 of the founding affidavit in support of the application filed under case number I 1745/2016 on 28 October 2016, pages 106 to 108 of the

indexed record, are identical in contents, as most of the paragraphs in the respective founding affidavits are (with different paragraph numbers, necessitated by adapting to make provision for the 'different' cases).

[24] In the matter of *Christian v Metropolitan Life Namibia Retirement Annuity Fund and Others* 2008 (2) NR 753 (SC), the Supreme Court of Namibia stated the following at paragraph [42], 773 H – 774 C:

“Orders to stay proceedings by reason of the non-payment of costs previously incurred in interlocutory proceedings or in earlier proceedings based on substantially the same cause of action are normally reserved to prevent vexatious litigation, an abuse of the court's process or to mark the court's disapproval of a party's conduct. In the latter regard, Hall J said the following in *Argus Printing and Publishing Co Ltd v Rutland*:

'The Court has a discretion in deciding whether a stay of action should be granted, or not, and the decisions appear to me to show that it will not exercise that discretion in such a way as to bar a litigant from pursuing his remedy for the infringement of his rights unless he has done something either in the incurring of the costs or in seeking to escape from paying them which invites the Court's disapproval. A factor which will weigh with the Court is whether the party who has been ordered to pay costs has incurred them by reason of some abuse of the process of the Court. Another factor is whether that party has either deliberately or through carelessness occasioned unnecessary costs, and a third factor the existence of which would warrant the granting of a stay is whether that party has contumaciously refused to pay the costs awarded against him, or is vexatiously withholding payment . . .”

[25] The court is at large to consider and accept all relevant undisputed facts in the founding affidavits to decide whether respondent was vexatious, oppressive and mala fide in his conduct.

[26] There is no evidence that the granting of prayers 6 and 7 would lead to an injustice and/or that it would bar the respondent in pursuing a remedy which he in law may pursue. The court also take into account the respondent's failure to file

answering affidavits (as ordered) and the late filing of notices in terms of Rule 66 (1) (c), without condonation sought.

[27] In the matter of Nationwide Detectives and Professional Practitioners CC v Standard Bank of Namibia Ltd 2008 (1) NR 290 (SC) the Supreme Court of Namibia stated the following on the subject on 303 C – D and 303 G – 304 B:

“[40] The basic rule is that an award of costs is in the discretion of the court. In Kruger Bros & Wasserman v Ruskin, a decision that has been consistently followed by South African courts, Innes CJ said the following in respect of this basic rule:

. . . the rule of our law is that all costs - unless expressly otherwise enacted - are in the discretion of the Judge. His discretion must be judicially exercised; but it cannot be challenged, taken alone and apart from the main order, without his permission.

[42] Furthermore, as far as the order to stay the proceedings where previous costs remain unpaid is concerned, the making of or refusal to make such an order is undoubtedly discretionary. Cilliers, for example, makes the following statement in this regard:

In Strydom v Griffin Engineering Co [1927 AD 552 at 553] the Appellate Division held that there is no hard and fast rule as to when costs incurred in earlier proceedings in a case must be paid before a litigant will be allowed to proceed further. If the non-payment of the costs is vexatious, oppressive or mala fide, the court will not allow the litigant to proceed before paying the earlier costs. If there is a mere inability to pay, the court may grant its indulgence to the applicant; but even where an inability to pay exists and where there is no bad faith or intention to act vexatiously, the court is still entitled to look to all the surrounding circumstances and then in its discretion determine whether or not the earlier costs should be paid. This statement, it was later held, seems to widen the principles upon which the court will act so much that it can be said that the matter is entirely in the discretion of the court.”

[28] The court came to the conclusion that respondent's conduct merits a decision and orders as sought in paragraphs 6 and 7 of the respective notices of motion.

COSTS

[29] Prayer 8 of the respective notices of motion seek costs occasioned thereby on the scale of attorney and own client, such costs to include the costs of one instructing and one instructed counsel.

[30] Counsel for respondent contended that Rule 32 (11) of the Namibian High Court Rules is applicable.

[31] The Rule provide as follows:

"Despite anything to the contrary in these rules, whether on or not instructing and instructed legal practitioners are engaged in a cause or matter, the costs that may be awarded to a successful party in any interlocutory proceeding may not exceed N\$20 000.00."

[32] From the case of *South African Poultry Association and Others v. Ministry of Trade and Industry and Others* 2015 (1) NR 260 (HC) it is clear that the court has a discretion to grant costs on a higher scale as mentioned in Rule 32 (11). In order to exercise such a discretion the following considerations should be weighed – ¹

32.1 The Importance and complexity of the matter.

32.2 Whether the parties are litigating at full stretch.

32.3 The parties must be litigating with equality of arms.

32.4 It will be a weighty consideration whether both parties crave a scale above the upper limit provided by the Rule.

¹ Op cit, paragraphs [67] and [68], on 282 A – G

32.5 The reasonableness or otherwise of a party during discussions contemplated in rule 32 (9).

32.6 The dispositive nature of the interlocutory motion.

32.7 The number of interlocutory applications moved in the life of the case; the more they become the less likely it is that the court will countenance exceeding the limit of the rules.

32.8 Whether both parties command substantial resources.

32.9 The rationale of the rule is to discourage a multiplicity of interlocutory motions which often increase costs and hamper the court from speedily getting to the real disputes in a case.

32.10 The party who seeks a higher scale bears the onus and must make out a clear case therefor.

32.11 In an interlocutory application even where the court in its discretion decides to allow costs above the limitation in Rule 32 (11), excessive costs is unjustified.

[33] In the matters at hand the applicant complied with Rule 32 (9) and (10) and made a bona fide attempt to resolve the disputes. The respondent was uncooperative.

[34] The matters were time consuming and commanded substantial resources. The volume of the documents filed of record, is noted. Both parties command substantial resources, it seems.

[35] The importance and complexity of the matter is born out, not only by the content and volume of the documents, but also the attempted Rule 66 (1) (c) notices which raised complex issues in multiplicity and which had to be dealt with by the applicant in its heads of argument.

[36] Respondent's approach to the subject litigation caused a substantial increase in legal costs, from which he constantly shy away, when occasioned to the applicant. Prayers 6 and 7 of the respective notices of motion, are dispositive in its context.

[37] Respondent (somewhat contradictory) also prays for costs of one instructing one instructed counsel on a scale as between attorney and own client.

[38] Both parties litigating at full stretch and have instructing and instructed counsel. They are litigating with equality of arms.

[39] The two applications are both before the same court and the outstanding relief (prayers 6, 7 and 8) are identical and relate to the same origin. Applicant has satisfied the onus to make out a clear case for the higher scale (above the limitation of Rule 32 (11)).

[40] The court exercise its discretion to allow costs above the upper limit provided for in Rule 32 (11).

[41] In the circumstances the taxing officer is directed not to curb the costs by applying the limit of N\$20 000.00 to any of the two applications.

PUNITIVE COSTS SCALE

[42] The Court, having decided not to curb costs in terms of Rule 32 (11) for the above mentioned reasons, is still faced with the issue of a punitive scale on an attorney and own client basis.

[43] The nature of the relief granted in terms of prayers 6 and 7 of the respective notices, was already premised on the respondent's continuous disregard for this court's orders and abusive proceedings and vexatious non-payment of occasioned costs.

[44] In exercising its discretion not to curb costs in terms of Rule 32 (11), the court has already allowed a higher scale in interlocutory matters and is cautious to exceed the limitation and rationale of Rule 32 (11) excessively as it will be unjustifiable. The court in this matter(s) are faced with a striking duplication between the applications and relief claimed. Furthermore the court has to accept, having had regard to the wording of prayer 8, that two bills of costs will be presented to the taxing officer. One for the application under the 2012 case and one for the application in the 2016 case. Both instructing and instructed counsel remained the same in both applications.

[45] For the above reasons and despite the authority relied upon by the applicant, the court rules that costs in both applications will be allowed on a party and party scale only, and the taxing officer is so directed.

[46] Consequently the court issue the following order –

- 46.1 The respondent shall pay all the adverse costs orders which the applicant obtained against the respondent in the Court under case number I 3896/2012 including interest thereon prior to proceeding with any form of litigation against the applicant in the Court in relation to the judgment of this Court dated 8 February 2013 under case number I 3896/2012.
- 46.2 The respondent is barred from instituting any proceedings against the applicant in this Court in relation to the judgment of this Court dated 8 February 2013 under case number I 3896/2012 unless and until all the adverse costs orders which the applicant obtained against the respondent in the Court under case number I 3896/2012 have been fully paid including interest thereon.
- 46.3 The respondent shall pay the applicant's costs occasioned by the application in case number I 3896/2012 filed on 6 September 2016 on a party and party scale, such costs to include the costs of one instructing and one instructed counsel, free from the limitation imposed by Rule 32 (11).

- 46.4 The respondent shall pay the applicant's costs occasioned by the application in case number I 1745/2016 filed on 28 October 2016 on a party and party scale, such costs to include the costs of one instructing and one instructed counsel on a bill of costs to be presented to the taxing officer which shall allow for reasonably reduced time in view of copying from the application filed on 6 September 2016, with regard to refreshing of both instructing and instructed counsel, free from the limitation imposed by Rule 32 (11).

GH OOSTHUIZEN
Judge

APPEARANCES

APPLICANT: Adv. De Jager
Instructed by Behrens & Pfeiffer, Windhoek

RESPONDENT: Adv Strydom
Instructed by Erasmus & Associates., Windhoek