

“ANNEXURE 11”

IN THE HIGH COURT OF NAMIBIA

Case Title: <i>Namibia Tourism Board vs Mundial Telecom Sarl</i>	Case No: HC-MD-CIV-ACT-CON-2016/02888 INT-HC-OTH-2017/00120
	Division of Court: High Court
Heard before: Honourable Justice Herman Oosthuizen	Date of hearing: 18 September 2017 11 May 2018
	Delivered on: 2 July 2018
Neutral citation: <i>Namibia Tourism Board v Mundial Telecom Sarl</i> (HC-MD-CIV-ACT-CON-2016/02888 [2018] NAMCMD 198 (2 July 2018))	
Result on merits: Partially successful.	
The order: Having heard Mr Kanguuehi , counsel for the plaintiff, and Ms Campbell , counsel for the first and second defendants, and having read the documents filed of record: IT IS ORDERED THAT: 1. The Namibian High Court does not have jurisdiction over the second defendant's person and did not have such jurisdiction at the commencement of the action. 2. Plaintiff's application for the dismissal of the first defendant's defence fails. 3. First defendant is barred from pleading, and its plea which was filed without this court's condonation, was irregular and to be ignored. 4. Each party to bear its own costs.	

Reasons for orders:

1 Article 80(2) of the Namibian Constitution addresses the High Court's jurisdiction over causes of action.

2 This said article has territorial operation and does not operate or have effect outside the Namibian national borders in the sense advanced by the plaintiff.

3 The adagium of *Van Niekerk, J in Namibia Bunker Services (Pty) Ltd v ETS Katanga Futur and Another* 2015(2) NR 461 (HC) at 472 D, is confirmed. If an *incola* wishes to sue a *peregrini* to enforce a claim sounding in money, that *incola* is still required to attach property of the *peregrinus* to confirm jurisdiction even if the High Court has jurisdiction over the cause of action.

4 The above position in law is not unconstitutional.

5 First defendant was obliged to seek condonation for its noncompliance with this court's order of 9 May 2017 as soon as it became clear that it would not meet the deadline. It fails to do so and was only spurred into action by plaintiffs' application to dismiss its defense and further failed to launch an application for condonation at all.

6 First and second defendants inexplicable failure to apprise plaintiff since 2016 until they were spurred into action by plaintiff's application for dismissal, of their alleged intention to raise the jurisdictional points, while actively participating in endeavours to mediate (if they were at all serious) and compromising through a joint case plan and status reports, deprive both of them from possible costs orders in their favour.

Judge's signature:

Note to the parties:

Counsel:

Plaintiff(s)

Defendant (s)

K Kanguuehi
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