



HIGH COURT OF NAMIBIA MAIN DIVISION, WINDHOEK

JUDGMENT

Case no: HC-MD-CIV-ACT-MAT-2018/00704

In the matter between:

MUNICIPAL COUNCIL OF WINDHOEK

APPLICANT/PLAINTIFF

and

PETRUS NDUUVU KOLOWALI

RESPONDENT/DEFENDANT

Neutral citation: *Municipal Council of Windhoek v Kolowali* (HC-MD-CIV-ACT-CON-2018/00704) [2018] NAHCMD 206 (5 July 2018)

Coram: USIKU, J

Heard on: 05 July 2018

Delivered: 05 July 2018

Flynote: Practice – Applications and motions – Interlocutory applications – Failure to comply with rule 32(9) and (10) – Matter struck from the roll.

Summary: Applicant launched an application for summary judgment and an application for condonation for late filing of heads of argument. Applicant only attached a copy of a letter, to the application for summary judgment, indicating that Applicant had invited the Respondent to provide Applicant with a “settlement proposal”. Court holding that such letter does not constitute compliance with the requirements of rule 32 (9) and (10). Applicant’s application struck from the roll.

ORDER

1. Applicant’s application for condonation for late filing of heads of argument and the application for summary judgment, are struck from the roll on account of non-compliance with the provisions of Rule 32(9) and (10).
2. The Applicant is ordered to pay the costs of the Respondent, such costs to include costs of one instructing and one instructed counsel.
3. The case is postponed to 26 September 2018 at 15:15 for Case Planning Conference.
4. The parties are directed to file a joint case planning report on or before 20 September 2018.

REASONS IN TERMS OF PRACTICE DIRECTIONS 61 (9)

USIKU J:

Introduction

[1] In this matter the Applicant applies for summary judgment against the Respondent.

[2] On the 18 April 2018 the court ordered the Applicant to comply with the provisions of Rule 32(9) and (10) on or before 23 April 2018, and to file its application for summary judgment on or before the 30 April 2018.

[3] By order dated the 21 May 2018, the Applicant was directed to file its heads of argument on or before the 28 June 2018.

[4] The Applicant filed its application for summary judgment on 27 April 2018, and attached to that application a copy of a letter addressed to the Respondent, dated 12 April 2018. In that letter the Applicant had requested the Respondent to advise the Applicant before noon on 13 April 2018 whether the Respondent had any settlement proposal or to advise the Applicant what the defence of the Respondent to the Applicant's claim is.

[5] In regard to the filing of its heads of argument, the Applicant did not file its heads of argument by the 28 June 2018, but filed such heads on the 30 June 2018. The Applicant has on the 02 July 2018 filed an application for condonation for late filing of its heads of argument. There is no compliance with the provisions of Rule 32(9) and (10) by the Applicant in respect of the application for condonation.

[6] The issue standing presently for determination is whether the Applicant ought to have complied with the provisions of Rule 32(9) and (10) in regard to the application for condonation and the application for summary judgment, and whether the Applicant had done so.

[7] Counsel on both sides are agreed that the Applicant is obliged to have complied with Rule 32(9) and (10). In respect to the application for condonation, the Applicant acknowledges that it has not complied with the requirements of Rule 32(9) and (10). In regard to the application for summary judgment the Applicant contends that it has “substantially” complied with the provisions of Rule 32(9), but accepts that it has not complied with Rule 32(10).

[8] The substantial compliance contended for by the Applicant refers to the letter dated the 12 April 2018, addressed to the Respondent in which the Applicant requested the Respondent to advise before noon on 13 April 2018 whether the Respondent has any settlement proposal or to advise what the defence of the Respondent to the Applicant’s claim is.

[9] The Respondent argues that the Applicant has failed to comply with the provisions of Rule 32(9) and (10), and cites the case of *Bank Windhoek Limited v Benlin Investment CC*, Case No. HC-MD-CIV-CON-2016/03020 delivered on 14 March 2017, as authority.

[10] In terms of the provisions of Rule 32(9) an applicant is required, prior to launching an interlocutory application, to seek amicable resolution with the respondent. In my opinion the search for an amicable resolution must be initiated, pursued and concluded. The intention of such overtures is to resolve the dispute, which is the subject of the interlocutory proceeding, by means other than through litigation. Where the initiatives are rebuffed or snubbed, the Applicant is required to file the details of such rebuffing and set out all steps taken by the Applicant to have the matter amicably resolved.

[11] A letter requesting a party to advise “before noon” of the following day, whether such party has any “settlement proposal” or to state what his/her “defence” is, alone, is not sufficient initiative for the search of an amicable resolution contemplated under Rule 32(9). What is sufficient initiative for the purpose of Rule 32(9) will vary from one case to another, depending on the peculiar facts of each case. What is clear is that, there should be clear intention on the part of an applicant to make serious effort to engage the respondent in the process of attempting to resolve the matter amicably.¹

[12] The applicant has not demonstrated such serious intention in the present matter. Indeed in the present matter, there has been non-compliance with the provisions of Rule 32(9) and (10).

[13] For the foregoing reasons, the application for condonation and the application for summary judgment stand to be struck from the roll with costs, such costs to include costs of one instructing and one instructed counsel, as more fully set out in the order above.

B Usiku
Judge

¹ See *Bank Windhoek Limited v Benlin Investment cc* (supra) para [19].

APPEARENCES:

APPLICANT/PLAINTIFF : K Morland
of ENSAfrica | Namibia (incorporated as
LorentzAngula Inc.), Windhoek

RESPONDENT/DEFENDANT: B Siyomunji
of Siyomunji Law Chambers, Windhoek