

“ANNEXURE 11”

IN THE HIGH COURT OF NAMIBIA

Case Title: Tjiurisa // Naobeb	Case No: HC-MD-CIV-MOT-GEN-2018/00219
	Division of Court: High Court
Heard before: Honourable Mr Justice Angula, Deputy Judge-President	Date of hearing: 13 July 2018
	Delivered on: 13 July 2018
Neutral citation: <i>Tjiurisa v Naobeb</i> (HC-MD-CIV-MOT-GEN-2018/00219) [2018] NAHCMD 217 (13 July 2018)	
Result on merits: Merits not considered.	
The order: Having heard Ms Katjaerua , counsel for the applicant, and Mr Ravenscroft-Jones , counsel for the first respondent, and having read the documents filed of record: IT IS ORDERED THAT: 1. The application is struck from the roll, urgency is self-created. 2. The applicant is ordered to pay the costs of the application, such costs to include the costs of one instructing counsel and one instructed counsel.	
Reasons for orders:	
1. The urgency claimed by the applicant is self-created for the following reasons: 1.1 According to the papers, the applicant was informed by the respondents' representative on 1 July 2018 that the burial will take place on 14 July 2014. 1.2 There is a dispute on papers as to whether an agreement was reached between the parties to hold two memorial services, where after the body would be handed over to the applicant for burial	

at Epukiro. The allegation by the applicant that there was such an agreement is denied by the respondents in the letter by the legal representative for the respondent which was attached to the applicants founding affidavit. The letter *inter alia* reiterated that the burial would take place at Windhoek on 14 July 2018. The content of the letter is not disputed by the applicant, at least the statement that the applicant's representatives were informed that the burial would take place on 14 July 2018. Applying the Plascon-Evans rule, the respondents' version prevails.

2. In my view the applicant should have, then and there, immediately after 1 July 2018 launched the application. She did not. My conclusion is that the applicant was culpable remised.
3. Furthermore, I am of the view that there is alternative remedy which could be afforded to her at a hearing in due course by applying for an order for leave to exhume and rebury the remains of her son at Epukiro.

Costs

4. The court could not see the reason why the normal rule which stipulates that costs follow the result, should not apply. The applicant was unsuccessful. The respondents have been caused to incur costs. The applicant must pay the respondents costs.

Judge's signature:	Note to the parties:
Counsel:	
Applicant(s)	First Respondent
E Katjaerua of Katjaerua Legal Practitioners, Windhoek	J P Ravenscroft-Jones instructed by Fisher, Quarmby & Pfeifer, Windhoek