

REPUBLIC OF NAMIBIA



HIGH COURT OF NAMIBIA MAIN DIVISION, WINDHOEK

REVIEW JUDGMENT

Case no: I 1569/2013

In the matter between:

TJOKLITS INVESTMENTS CC

PLAINTIFF

and

AQUARIUS INVESTMENTS NO.191 CC

1ST DEFENDANT

THE MUNICIPAL COUNCIL OF HENTIES BAY

2ND DEFENDANT

Neutral citation: *Tjoklits Investments CC v Aquarius Investments No. 191 CC*
(I 1569/2013) [2018] NAHCMD 322 (15 October 2018)

Coram: OOSTHUIZEN, J

Allocated: 20 February 2018

Delivered: 15 October 2018

Flynote: Rule 32(11). Meaning of. Rule 75(1) review.

Summary: Rule 32(11). Plaintiff, the unsuccessful parties' costs was limited by Taxing Officer.

Held, Rule 32(11) cap only the costs awarded to the successful party.

ORDER

IT IS ORDERED THAT:

1. Rule 32(11) of the Rules of the High Court, as it presently read, limits only the award to the successful party to N\$20 000.
2. If and when the unsuccessful party is awarded costs, its costs is not limited by the provision to N\$20 000.
3. The Taxing Master has acted *ultra vires* of the Rule 32(11) provisions by limiting the plaintiff's costs (unsuccessful parties' costs).

JUDGMENT

OOSTHUIZEN J:

[1] For purposes of this review the court shall quote the Notice in terms of Rule 75(1) of the High Court Rules in full and refer to principles of interpretation which form part of Namibian Law and conclude.

[2] The notice in terms of rule 75(1) read as follows:

'BE PLEASE TO TAKE NOTICE that the Plaintiff hereby requests the Taxing Officer to state the case for the decision of a Judge on the following item(s) objected to or disallowed by the Taxing Officer at the taxation held on 8 May 2017 in pursuance of the judgment and order delivered by His Lordship Mr. Justice Miller A J on 8 November 2016, in respect of which the Taxing Officer issued her allocator on 2 June 2017 and in terms of which she limited the Plaintiff's costs to N\$20, 000.00. The Plaintiff will contend on review that the Taxing Officer acted *ultra vires* Rule 32(11) as,

1. The limitation by the Taxing Office of the Plaintiff's costs, as unsuccessful party, [as opposed to the costs of the "successful party" as contemplated by Rule 32(11)], to N\$20,000.00 occurred in circumstances where:

1.1 The limitation of N\$20 000 is clearly aimed at limiting costs awarded to a successful party.

1.2 First Defendant was successful in its application for an amendment;

1.3 The First Defendant was successful in its application for leave to institute a counter-claim late;

1.4 The Plaintiff was unsuccessful in its opposition of the above two applications;

1.5 The costs were, however, not awarded by the Court to the First Defendant as "successful party", but to the Plaintiff as the unsuccessful party.'

[3] In the Supreme Court case of *Total Namibia v OBM Engineering and Petroleum Distributors* 2015(3) NR 733 SC paragraphs [17] to [19] on pp 738 to 740, the correct interpretational approach is set out.

[4] Without quoting in *extenso* what was said, it is apparent that the context and nature of a document or the writing is important. Consideration must be given to the language used, the ordinary rules of grammar and syntax. The approach must be objective. Words must be given their ordinary meaning. Judges should not succumb to a temptation to substitute what they regard as reasonable for the words actually used.

[5] Rule 32(11) provides in the clearest terms:

'Despite anything to the contrary in these rules, whether 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.'

[6] Despite earlier decisions which is read to the contrary, the rule maker has clearly not capped the costs of both opposing parties to N\$20 000. The rule maker has capped only the successful party to N\$20 000. The word "successful" in the rule cannot be ignored. It targets one party and one party only with the capping provision, the successful party.

[7] Earlier authority should be read and interpreted in view of the fact that only the successful party is capped by the provisions of Rule 32(11). A successful party will have the onus to establish why its costs should not be capped.

[8] If the general intent of the rule maker was to cap every party in interlocutory proceedings, i.e the successful and the unsuccessful party it should have made it clear. The word "awarded" should have read and should have been substituted with the word "taxed" and the word "successful" would not have been in the sentence. The last part of the sub-rule (32(11)) then would have read thus:

'the costs that may be taxed to a party in any interlocutory proceeding may not exceed N\$20 000.'

[9] Plaintiff is successful with its review.

[10] Rule 32(11) of the Rules of the High Court, as it presently read, limits only the award to the successful party to N\$20 000. If and when the unsuccessful party is awarded costs, its costs is not limited by the provision to N\$20 000. The Taxing Master has acted *ultra vires* of the Rule 32(11) provisions by limiting the plaintiff's costs (unsuccessful parties' costs).

GH Oosthuizen
Judge

APPEARANCES

PLAINTIFF: Andima
of Van Der Merwe-Greef Andima Inc., Windhoek

DEFENDANT: Vermeulen
of Ellis Shilengudwa Inc., Windhoek