

“ANNEXURE 11”
Practice Directive 61

IN THE HIGH COURT OF NAMIBIA

Case Title: Gecko Salt (Pty) Ltd // The Minister of Mines and Energy & 8 Others	Case No: HC-MD-CIV-MOT-REV-2017/00307
	Division of Court: High Court (Main Division)
Heard before: Honourable Mr Justice Angula, Deputy Judge-President	Date of hearing: 1 October 2018
	Delivered on: 15 November 2018
Neutral citation: <i>Gecko Salt (Pty) Ltd v The Minister of Mines and Energy</i> (HC-MD-CIV-MOT-REV-2017/00307) [2018] NAHCMD 364 (15 November 2018)	
The order: Having heard Mr Rorke , counsel for the applicant, and Mr Corbett (assisted by Mr Obbes), counsel for the third, fourth and fifth respondents, Mr Gaya , counsel for the ninth respondent, and having read the documents filed of record: IT IS ORDERED THAT: 1. The application for leave to amend is struck from the roll with costs. Costs to include costs of one instructing and two instructed counsel. 2. The matter is postponed to 28 November 2018 at 09h00 for status hearing in chambers.	
Reasons for orders:	
[1] The applicant seeks leave to amend its Notice of Motion in the main review application by inserting a new prayer which reads. 'That it be ordered that mining licences 82D, 82E and 82F have been abandoned and therefore lapsed'. [2] The third, fourth and fifth respondents ('the respondents') filed an objection to the notice of	

amendment contending *inter alia* that the applicant has not complied with rule 32(9) and (10).

[3] In my view point that the applicant has not complied with rule 32(9) and (10) is fatal and dispositive of the application for the following reasons:

3.1 This court has held in a number of cases that compliance with rule 32(9) and (10) is mandatory; that a party who did not, prior to the launching of the amendment application, seek an amicable solution with the opposing party, nor did such file with the Registrar a report detailing the steps taken to have the matter resolved amicably, is non-suited for such non-compliance.

3.2 Furthermore that when considering the use of the word 'must' in rule 32(9) and (10) it make it clear that the intention of the rule-maker as set out in rule 1(2) concerning the overriding objective of the rules, the provisions of rule 39(9) and (10) are peremptory, and non-compliance with them must be fatal¹.

3.3 It has further been held that a court cannot proceed to hear and determine an interlocutory application where there had been a non-compliance with sub-rule in question; that the entry into the portals of the court to argue an interlocutory application must go via the route of rule 32(9) and (10) and any party who attempts to access the court without having gone through the route of the said sub-rules can be regarded as improperly before court and the court may not entertain that proceeding².

3.4 It is common cause that the applicant did not comply with rule 32 (9) and (10).

[4] It follows therefore that the application stands to be struck from the roll.

Judge's signature:	Note to the parties:
	Not applicable.

¹ *Mukata v Appolus* (I 3396/2014) [2015] NAHCMD 54 (12 March 2015).

² *Visagie v Visagie* (I 1956/2014) [2015] NAHCMD 117 (26 May 2015).

Counsel:	
Applicant	Third, Fourth and Fifth Respondents
S C Rorke instructed by Ellis & Partners Legal Practitioners, Windhoek	A Corbett (with him D Obbes) instructed by Engling, Stritter & Partners, Windhoek
	Ninth Respondent
	J Gaya of Fisher, Quarmby & Pfeifer, Windhoek