

**REPUBLIC OF NAMIBIA**



**HIGH COURT OF NAMIBIA MAIN DIVISION, WINDHOEK**

**RULING**

Case No: HC-CIV-ACT-CON-2017/01020

In the matter between:

**FIRST NATIONAL BANK OF NAMIBIA LIMITED**

**PLAINTIFF/RESPONDENT**

and

**LE-ALDO FRANKLIN DU PREEZ**

**DEFENDANT/APPLICANT**

**Neutral citation:** *First National Bank of Namibia Limited v Du Preez* (HC-CIV-ACT-CON-2017/01020) [2018] NAHCMD 383 (28 November 2018)

**CORAM:** PRINSLOO J

**Heard:** 28 November 2018

**Delivered:** 28 November 2018

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**ORDER**

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a) Application dismissed.

- b) Cost to follow the event.
  - c) Pre-trial order dated 24 August 2017 is hereby amended as follows:
    - i. Defendant, if so advised, either deliver a witness statement from Ms. Ingrid Katjiukua on or before 21 February 2019 alternatively serve subpoena on Ms. Ingrid Katjiukua before the date of continuation of trial.
  - d) Matter is postponed to **01/04/2019** at **10:00** for continuation of trial.
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#### **REASONS FOR THE RULING IN TERMS OF PRACTICE DIRECTIVE 61**

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PRINSLOO J:

1. The application before me was brought on notice of motion in the following terms:
  - '1. An order in terms whereof the Applicant is granted leave to call Ms. Ingrid Katjiukua to and testify before the Honourable Court;
  2. An order whereby the hearing of the matter is stayed until such a time that this application is determined;
  3. An order condoning the Applicant's non-compliance with the Rules of the Honourable Court and the Honourable Court's Orders in as far as the calling of witnesses is concerned;
  4. An order in terms of whereof the Respondent - in the event that it elects to oppose this application is ordered to pay the costs of the application;

5. Further and/or alternative relief that this Honourable Court may deem fit.<sup>1</sup>
  
2. The application was opposed by the respondent on the basis that the application is the incorrect application as no leave need to be sought from court to call a witness in a civil trial.
  
3. I agree with the argument advanced on behalf of the respondent in this matter. The application moved for is out of place and finds no application in the Rules of Court. The application as set out in the Notice of Motion is therefore dismissed and the cost to follow the event.
  
4. The application that should have been brought to court is an application for amendment of the pre-trial order as the parties are bound by their pre-trial reports, which constituted their binding compromise<sup>1</sup> (vide Rule 26(10) of the Rules of the High Court).
  
5. Having heard the parties in light of the prevailing circumstances in this matter it would be prudent to amend the pre-trial order dated 24 August 2017 in the following terms:
  - a. Defendant, if so advised, either deliver a witness statement from Ms. Ingrid Katjiukua on or before 21 February 2019 alternatively serve subpoena on Ms. Ingrid Katjiukua before the date of continuation of trial.

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JS Prinsloo

Judge

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<sup>1</sup> *Lee's Investment (Pty) Ltd v Shikongo* (HC-MD-CIV-ACT-CON-2016/03394) [2018] NAHCMD 321 (12 October 2018).

## APPEARANCES

FOR THE APPLICANT:

L Shikale

of Shikale &amp; Associates, Windhoek

FOR THE RESPONDENT:

Y Campbell (with her G McCulloch)

instructed by Fisher, Quarmby &amp; Pfeifer, Windhoek