

REPUBLIC OF NAMIBIA



HIGH COURT OF NAMIBIA, MAIN DIVISION, WINDHOEK  
PRACTICE DIRECTIVE 61

HC-MD-CIV-MOT-GEN-2017/00127

In the matter between:

**AUNE NDIWAKULUNGA SHITYENI**

**APPLICANT**

and

**FILLIPUS SHITYENI**

**RESPONDENT**

**Neutral Citation:** *Shityeni v Shityeni* (HC-MD-CIV-MOT-GEN-2017/00127)  
[2018] NAHCMD 88 (12 April 2018)

**CORAM:** MASUKU J

**Heard on:** 27 March 2018

**Delivered on:** 12 April 2018

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**ORDER**

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1. The application for the rescission of the order dated 20 October 2016 under case number HC-MD-CIV-ACT-OTH-2016/02510 is hereby refused.

2. The Applicant is to pay the costs of this application.

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**REASONS IN TERMS OF PRACTICE DIRECTIVE 61**

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[1] It is common cause that the immovable property in question belongs to the Ohangwena Regional Council and that the Final Order of Divorce still stands and has not been challenged by the applicant.

[2] The applicant failed to provide the court with a reasonable explanation regarding why no action was taken when the applicant was served with the varied court order.

[3] The applicant was served with the summons in respect of the eviction order sought against her on 6 September 2016 personally. Thereafter, the applicant did not defend the proceedings. The eviction order was subsequently granted by default on 20 October 2016. The applicant was served on 2 November 2016 with the Warrant of Ejectment.

[5] The applicant brought the rescission application on 18 April 2017, 6 months after the eviction order was granted and thus failed to bring the application within a reasonable time.

[6] The applicant failed to proffer a reasonable explanation for the delay.

[7] The applicant failed to demonstrate that she has prospects of success in the main action if this application were to be granted.

[8] In conclusion, the application stands to be dismissed with costs.

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TS MASUKU

Judge

## APPEARANCES:

APPLICANT/DEFENDANT: B Cupido  
of Isaacks & Associates, Windhoek

RESPONDENT/PLAINTIFF: A Hans-Kaumbi  
of Ueitele & Hans, Windhoek