

REPUBLIC OF NAMIBIA



HIGH COURT OF NAMIBIA MAIN DIVISION, WINDHOEK

EX TEMPORE JUDGMENT

In the matter between:

Case no: HC-MD-CIV-MOT-GEN-2017/00172

**ATLANTIC OCEAN MANAGEMENT
(PROPRIETARY) LIMITED
FISH SPAIN S.L.**

**FIRST APPLICANT
SECOND APPLICANT**

and

**THE PROSECUTOR-GENERAL
BANK WINDHOEK LIMITED
BANK WINDHOEK LIMITED (WALVIS BAY)
BANK OF NAMIBIA**

**FIRST RESPONDENT
SECOND RESPONDENT
THIRD RESPONDENT
FOURTH RESPONDENT**

Neutral citation: *Atlantic Ocean Management (Proprietary) Limited v The
Prosecutor-General* (HC-MD-CIV-MOT-GEN-2017/00172)
[2019] NAHCMD 117 (11 March 2019)

Coram: GEIER J
Heard: 07 March 2019
Delivered: 11 March 2019
Released on: 24 April 2019

Flynote: Practice — Interlocutory application — Compliance with High Court Rules, rule 32(9) and (10) peremptory for all interlocutory applications — Non-compliance with rule 32(9) and (10) normally rendering application to be struck from roll – Rule 32(9) however silent in regard to the time, place and manner in which the envisaged engagement of the parties had to occur – save that the engagement has to occur before the launching of the envisaged interlocutory proceedings – In the current case the applicants did file a Rule 32(10) report – In the particular circumstances of the case the court however found the applicants to have complied substantially with Rules 32(9) and (10) - accordingly the *in limine* objection raised in this regard was not upheld.

Practice — Parties — Joinder — Non-joinder of necessary parties – in this case the applicants were seeking the release of funds to be repatriated to Spain held by a commercial bank on the instructions of the Bank of Namibia – such funds had originally formed the subject matter of a preservation of property order made under POCA which had been discharged and which discharge was the subject matter of a pending appeal. The Court after considering the applicable statutory framework – the Exchange Control Regulations and the Bank of Namibia Act - governing the repatriation of funds to a foreign country – holding that the Minister of Finance was a party with a substantial and direct interest in any order the court might make and who had to be joined by virtue of his position of authority over any officer who deals with any matter contemplated in the Exchange Control Regulations and also in view of the relief that the applicants were seeking to set aside certain Exchange Control Regulations.

Summary: The facts appear from the judgment.

ORDER

1. The first respondent's *in limine* objection based on the non-compliance with Rules 32(9) and (10) is dismissed.
2. The applicant and first respondent are to each pay their own costs in this

regard.

3. The fourth respondent's *in limine* objection based on the non-joinder of the Minister of Finance is upheld with costs, such costs to include the costs of one instructed- and one instructing counsel.
4. The *in limine* objection based on the non-joinder of the Government of the Republic of Namibia is not upheld.
5. The applicants are to effect service of all papers in this matter on the Minister of Finance, c/o the Government Attorney, on or before 25 March 2019.
6. The Minister of Finance is to indicate on or before 12 April 2019 whether or not he intends to oppose the matter or participate in any manner in the currently pending proceedings.
7. The case is postponed to 17 April 2019 at 08h30 for a Status hearing and in order to determine the further conduct of this case.

JUDGMENT

GEIER J:

[1] The court by way of its Case Management Order dated 6 December 2018 set down certain *in limine* points raised by the respondents in this matter for argument.

[2] Central to the current issues pending before the court is the applicant's quest to procure the release of funds currently held at Bank Windhoek through an order directing the Bank of Namibia to give permission to second and third respondents, (Bank Windhoek Ltd and Bank Windhoek Ltd, Walvis Bay respectively), to release the positive balance held in the first applicants bank account.

[3] There is also an incidental prayer in which - and in so far as this maybe necessary to mention - review relief is sought – and where more particularly - the

setting aside and review of Regulation 22(d) of the Exchange Control Regulations 1961 is sought in so far as it pertains to the fourth respondent's revocation of the permission to operate Atlantic's Bank Windhoek account with number CFC8005259340 and or the decision to attach the funds in Atlantic's Bank Windhoek account in terms of Regulation 22(a)(1)(b) of the Exchange Control Regulations.

[4] It should maybe be added - for completeness - that at the core of the dispute pending between the parties, lies the setting aside of a preservation of property order originally granted in terms of POCA, on the basis of certain material non-disclosures perpetrated by the first respondent, which judgment (the one granting the said setting aside), is currently the subject of a pending appeal before the Supreme Court since 8 September 2017.

[5] All parties complied with the court's directions relating to the filing of heads, in which heads of argument they then formulated their contentions on the various *in limine* points that have been raised.

[6] At the commencement of the hearing and upon a consideration of the various points raised by the parties, I gave further directions in that I informed the parties that I deemed it apposite to ask counsel to address me only in respect of the points relating to the non-compliance with Rules 32(9) and (10) and the one relating to non-joinder, as I considered that the determination of those points should be given priority, as the perceived non-compliance with Rules 32(9) and (10) could result in the striking of the application and as the determination of the non-joinder issue should in any event occur first, in order to ensure that all the necessary parties would be before the court, before any of the other issues would or should be determined.

The alleged non-compliance with Rules 32(9) and (10)

[7] Here it should firstly be mentioned that certain of the other *in limine* points revealed that there was a dispute between the parties whether or not the application - labelled as 'interlocutory' or 'incidental' in the court's orders - was really 'interlocutory' or 'incidental' or whether they were rather substantive in nature - in respect of which then different rules would apply.

[8] In this regard it is clear that if the application, which the court authorized the applicant to bring, was not interlocutory, as claimed by first respondent, then Rules 32(9) and (10) would obviously not come into play.

[9] It is thus somewhat ironic that counsel for the first respondent, who raised the Rule 32(9) and (10) point, relevant to interlocutory applications, in the same breath raised the point that the so-called interlocutory application claims substantive relief - and thus was not interlocutory as claimed - and that this was something that the court had not authorized, when it gave directions to the applicant as to how to bring the intended interlocutory application on or before 20 April 2018.

[10] Be that as it may, counsel then agreed that, for purposes of argument, this application should be treated in any event as 'interlocutory' or 'incidental'.

[11] It should also be stated that the applicants filed a Rule 32(10) report prior to the institution of this application in which the steps, as required by Rule 32(9), according to the applicant, had been set out.

[12] Against this background it was then contended that no communication had been directed to the first respondent to seek an amicable resolution as required by Rule 32(9) as the correspondence that had been referred to in the Rule 32(10) report was only addressed to the second, third and fourth respondents and thus that Rule 32(9) had not been complied with vis-à-vis the first respondent.

[13] With regard to the contents of the Rule 32(10) report relating to first respondent and where it had been stated that they were suggestions that had been made on the record during court proceedings, it was argued that such submissions and exchanges during case management could not be seen as complying with Rule 32(9).

[14] During oral argument Mr Boonzaier who appeared for the 1st respondent reiterated that there simply had been no communication with his client, who was not even aware of the application before it was launched.

[15] Mr Heathcote SC on the other hand pointed out that Rule 32(9) does not state at what time the envisaged engagement between the parties had to occur, (save that it had to occur before the launching of the application), and at what place. He pointed out that the rule did also not even prescribe or set out the form or manner of the envisaged engagement and whether or not letter- writing would suffice. Against this background it was submitted further that the required deliberations took place in court at the various case management hearings and through the exchange of status- and case management reports and that this should satisfy the requirements set by the rule.

[16] These exchanges of course in any event also revealed the first respondent's advice to applicant as to how to proceed, so the argument ran further.

[17] Mr Heathcote made the further point that if the 1st Respondent had wanted to go behind the Applicants Rule 32(10) statement or did disagree with its contents then the 1st Respondent should have put up its own version of what had occurred or what did not occur. He thus considered the raising of the point as misplaced.

[18] If one considers the submissions it would indeed appear that Rule 32(9) is silent as to how precisely a party, wanting to initiate an interlocutory application, is to seek an amicable resolution, before launching it. It is also so that the resultant Rule 32(10) report should not disclose any prejudicial information. The report filed in this instance then goes on to allege that extensive efforts were made to have the matter amicably resolved.

[19] It is further so that the application only seeks a costs order against the first respondent and seeks relief relating to the release of the funds directly from the second and third respondents via the fourth respondent. It is also so that 1st respondent has an indirect interest in all this and should thus have been approached in terms of Rule 32(9).

[20] Reliance was also placed in this regard by the applicant on the detailed allegations made in paragraphs 59 to 87 of the founding papers. It is so that these paragraphs set out in detail the steps taken and correspondence exchanged to achieve an amicable resolution, particularly with the 2nd to 4th respondents. It is

between these parties after all that the release of the funds in question predominantly lay to be resolved. An amicable resolution was not achieved despite such numerous efforts at an amicable resolution.

[21] Some argument in court turned on what could have featured in a rule 32(9) discussion between applicant and 1st respondent for an amicable resolution of the dispute, which argument revealed that such a resolution could in any event not have been achieved particularly in view of the strong opinion held on behalf of the 1st respondent, that the noting of the appeal in this instance did not suspend the setting aside of the preservation property order given the provisions of Section 58(12) of POCA.

[22] It must be concluded, however, that given the vagueness of the requirements set by Rule 32(9), if viewed against the information placed before the court, the contents of the Rule 32(10) report, together with the detailed attempts at resolution, as contained in paragraph 59 to 87, should satisfy me that the requirements of the rules have essentially been met. I acknowledge at the same time however that the point taken on behalf of the first respondent was not entirely without substance.

[23] Here it should be mentioned that the court had requested Mr Heathcote to address the issue whether any steps in terms of Rule 32(9) had been taken from the date of the court's order of 11 April 2018 - the date on which the court had given directions in respect of the intended interlocutory application - and its delivery - on 20 April 2018. This aspect was not expressly covered in argument as my summation also shows. I will therefore accept that no such further engagement occurred until the filing of the Rule 32(10) report and the delivery of the application. I wish to state that I believe that it was particularly in that period that a further attempt at resolution in terms of Rule 32(9) should have occurred. It is by reason of this failure that I will decline to award any costs in this regard.

[24] For the purposes of this case only I am however prepared to uphold Mr Heathcote submissions that the attempts at resolution as contained in the Rule 32(10) report suffice. I therefore decline to uphold this point *in limine*.

The aspect of non-joinder

[25] This was a point raised on behalf of the fourth respondent, the Bank of Namibia. The bank based its case on argument formulated in the heads filed on its behalf as follows:

'23. It is respectfully submitted that the Government of the Republic of Namibia, the Minister of Finance and Treasury are necessary and interested parties in the present application, but have not been joined thereto by the applicants¹.

24. The Exchange Control Regulations, 1961, (regulation 1) defines "Treasury" as –

in relation to any matter contemplated in these regulations, means the Minister of Finance or an officer in the Department of Finance who, by virtue of the division of work in that Department, deals with the matter on the authority of the Minister of Finance.

25. In terms of Section 46 of the Bank of Namibia Act, 1997 (Act 15 of 1997) ("Bank" referring to the Bank of Namibia and "Minister" referring to the Minister of Finance) –

46. (1) The Bank shall act as agent for the Government in the administration of any law relating to exchange control, in accordance with such instructions or directives as the Minister may from time to time issue for this purpose.

(2) Any return, statement, account, or information required to be submitted to the Minister by authorised dealers in terms of the provisions of a law or pursuant to any instruction or directive contemplated in subsection (1) shall be submitted to the Bank for consolidation and transmittal to the Minister.

(3) The Bank shall at all times maintain a record of balance of payments containing such information, statistics and particulars and for such periods as the Board may from time to time determine, for the purpose of carrying out the objects of the Bank and discharging its duties and functions under this Act.

26. In terms of the notice of motion in the present application, the applicants seek relief which has an impact on, and which concerns Treasury (more particularly, given the powers,

¹ Answering Affidavit: pages 5 6, paragraph 14.

duties and functions ascribed to Treasury in the said Regulations), the Minister of Finance and the Government of the Republic of Namibia, including – but not limited to – an order directing the 4th respondent to “give permission to the 2nd and 3rd respondents to release the positive balance in the 1st applicant’s Bank Windhoek account”; the reviewing and setting aside of certain alleged decisions taken by the 4th respondent pertaining to the Exchange Control Regulations, 1961; and that this Court grant the applicants leave to “claim relief against the 2nd and 3rd respondents as set out in the notice of motion in the main application, should they refuse to release the positive balance and pay out the amount of USD 886,722.20, after the 4th respondent has complied with the relief sought in prayer 2”.

27. The “relief against the 2nd and 3rd respondents as set out in the notice of motion in the main application” is seemingly a reference to prayer 2 of the notice of motion in the application, and entails the following “The 2nd respondent is ordered to immediately release and pay out the amount of USD 886,722.20, held in account number CFC 8005 259 340, which is in the 1st applicant’s name, or its previous name of Shelfco Investments One Five Seven (Pty) Ltd, to the 2nd applicant’s account, in accordance with the 1st applicant’s payment instruction to the 2nd respondent of 18 November 2018”.

28. Regulation 3(1)(c) of the Exchange Control Regulations, 1961 requires the permission of Treasury or a person authorised by the Treasury and in accordance with such conditions as the Treasury or such authorised person may impose, before a person may make any payment to, or in favour, or on behalf of a person resident outside the Republic of Namibia, or place any sum to the credit of such person. Regulation 22A accords powers to Treasury.

29. Any person with a direct and substantial interest in any order which this Court may make in the litigation must be joined as a party. If the order which might be made would not be capable of being sustained or carried into effect without prejudicing a party, that party is a necessary party and should be joined to the proceedings, unless it consents to its exclusion.² Non-joinder of necessary parties in applications may result in the proceedings being subsequently challenged and set aside.³

[26] The response, as contained in the applicant’s heads of argument, was terse. It read as follows:

² Kleynhans v Chairperson of the Council for the Municipality of Walvis Bay and Others 2011 (2) NR 437 (HC), paragraph 32.

³ Standard Bank Namibia Limited and Others v Maletzky and Others 2015 (3) NR 753 (SC), paragraphs 39-42.

'18. The non-joinder point is weak, if not desperate, (with respect), for a number of reasons;

18.1. Firstly, BON was designated by the Minister of Finance to deal with the Exchange Control Regulations. If not, then why is it here?;

18.2. Secondly, neither the Government nor the Minister of Finance has a direct and substantial interest in the outcome of these proceedings (i.e. the order to be made). Similarly, they had no direct and substantial interest in the POCA proceedings in which Mr Justice Angula discharged the preservation order for material non-disclosures. The P.G knew from the start that the Exchange Control Regulations played a material part in her secret ex-parte applications. Yet, she correctly did not join the Minister or the Government;

18.3. Thirdly, because BON is the Minister of Finance (and therefore the Government's) statutory agent, there is not even a remote possibility that if the order sought by Atlantic is granted, it will later have to be set aside for non-joinder.

See: Standard Bank of Namibia Ltd and Others v Maletzky and Others 2015 (3) NR 753 (SC) at paragraph [42].

18.4. Fourthly, the "instructions or directive" referred to in paragraph 46 of BON's heads of argument, refers to existing "instructions or directives". Otherwise, the Minister will be able to govern retrospectively, affecting vested rights.'

[27] Mr Heathcote SC who appeared with Mr Jacobs then expanded on this line of argument during the hearing in that he submitted firstly that the court should consider whether the parties in respect of which the plea of non-joinder was raised, would really have any interest in the orders that were sought by the Applicants and whether any such orders could be executed against those parties. He re-iterated that the Minister of Finance simply has no direct and substantial interest in the order sought for the Bank of Namibia, to give permission to Bank Windhoek to release the funds in the applicant's accounts.

[28] He further pointed out that the fourth respondent was a statutory agent and when the court would consider this aspect it should do so with reference to how the court in *Kleynhans v Chairperson of the Council for the Municipality of Walvis Bay*

and Others 2011 (2) NR 437 (HC), had dealt with the non-joinder point raised in that case. He referred the court to paragraphs [32] to [35] of that judgment.

[29] He then requested the court to superimpose the current role players on the text of paragraph [35], which was to the effect - and I paraphrase - if I understood the argument correctly – that:

‘ ... the Bank of Namibia Act provides for a scheme whereby the Bank of Namibia, not the Minister administers the laws relating to Exchange Control... ‘

and on a similar basis, on which the learned Judge in *Kleynhans* had come to the conclusion that NAMPAB, an entity created by the Town Planning Ordinance, with predominantly advisory powers and being responsible for setting the policy framework and for town planning matters, was held not to be a necessary party to those proceedings, this court should hold that the Minister of Finance was not a necessary party that had to be joined in the current proceedings.

[30] This conclusion had been arrived at in a scenario where the Town Planning Ordinance had assigned to the minister the role of administering the planning legislation.

[31] In terms of the Bank of Namibia Act the minister may issue new instructions or directions for the Bank of Namibia to execute. The minister merely sets the framework. The Bank of Namibia then, in turn, regulates the second and third respondents, also through the rulings that are made from time to time.

[32] While the minister may have an interest in the wider sense, he has no direct and substantial interest like the statutory administrator. One cannot use common law agency principles in such scenario, where one would have to cite and sue the principal. The minister simply has nothing to do with the instructions that are being sought in respect of the banks. Also in the main application, brought by the Prosecutor General, the minister had not been cited, which proved the point.

[33] Mr Obbes who argued the matter on behalf of the fourth respondent firstly referred to the relief sought by the applicants as already alluded to in his heads. He

then pointed out that review relief was also sought and where the actions, taken in this scenario, in terms of Section 46 of the Bank of Namibia Act, where the actions of government, whose agent, executing the administration of the laws relating to the exchange control, was the Bank of Namibia, which had to execute such mandate in accordance with the instructions and directions of the minister.

[34] He pointed out that the relief was not only confined to retrospective events, but was also prospective. The Bank of Namibia was clearly the agent in respect of which the minister was the principal. In any event, the agency also extended to the minister's role.

[35] He argued further that *Kleynhans* was distinguishable. This could be ascertained upon a consideration of the roles the governing legislation had assigned to the parties in respect of which a joinder was sought there. In *Kleynhans* that entity was NAMPAB, a body which principally has an advisory role, while in the current instance the minister - in contra- distinction - was empowered to issue 'directives' and 'instructions' to the agent. He then put it bluntly: that in this case 'we have a different animal' - NAMPAB was simply not akin to a minister.

[36] He then referred the court to the Exchange Control Regulations where Regulation 22(e) dealt expressly with the delegation of powers to the treasury, which was not a legal entity but who, as per the definition cited, was to be regarded as the minister or as an officer in the department of finance, who deals with such matters on the authority of the minister and who might have to do so in the current scenario and in circumstances where the court might accede to the applicants case.

[37] He concluded his argument with reference to the applicable test and the (rhetoric) question to what extent can the relief sought, be carried into effect where the principal would not be before the court. The court should thus order the joinder contended for to ensure the effectiveness of its order.

[38] In reply Mr Heathcote submitted again that the common law principles of agency were not applicable to the matter, as it was parliament that had decreed that the Bank of Namibia be the agency which had to act in accordance with the minister's instructions or directions, which the minister could from time to time issue

for this purpose. This meant that the Bank of Namibia could always act only in accordance with existing instructions and the case could only be determined with reference to existing directives and instructions.

[39] He then referred the court to the *Southline Retail Centre CC v BP Namibia (Pty) Ltd* 2011 (2) NR 562 (SC) case, where the court also had to decide whether the minister should have been joined and where the Supreme Court considered the applicable statutory provisions in order to determine whether or not the minister had a direct legal interest in the subject matter of that case, which could be prejudicially affected by the determination of that case.

[40] The subject matter in that case was whether the respondent was entitled to evict the applicant from certain premises. The answer to that question depended on the terms of the lease signed between applicant and respondent. The minister was not a party to such lease nor did he have any rights or obligations flowing from it. The fact that a complaint was referred to the minister in terms of the Petroleum Products Act did not alter this and where the Supreme Court then held that the existence of statutory procedural obligations re the determination of the process of arbitration, even if such process was determinative of the outcome of the court proceedings did not result in a situation where the minister would have a direct legal interest in the outcome of such proceedings. The Supreme Court added that the powers of the minister under the regulations did also not alter this situation.

[41] Mr Heathcote then posed the question whether the order, the court might make at the end of the day in this matter, would, in the absence of the joinder of the minister, be legally effective. The answer he gave in conclusion of his argument was that it was.

Resolution of the non-joinder point

[42] It is clear to me that the joinder issue in this case will also have to be determined with reference to the statutory frame work relied upon by Mr Obbes, on behalf of the fourth respondent.

[43] It is also clear that the parties were *ad idem* in regard to the legal test that would be applicable to the determination of this issue.

[44] Before one then, with this in mind, turns to the analysis of the statutory provisions, it should also be said that all this must further be seen in the light of the subject matter of the dispute, which is whether or not the court is to order the fourth respondent to give permission to the second and third respondents to release the positive balance in the first applicant's bank account held with Bank Windhoek.

[45] Importantly, and in so far as this may be necessary, it must be kept in mind here that review relief is also sought in terms of which Regulations 22(d) of the Exchange Control Regulations 1961 are to be set aside as well as the related decision to revoke the permission in relation to the operation of first applicant's bank account and to attach the first applicant's funds in such account.

[46] It is also clear that the funds to be released is the sum of U\$ 886 722.20, which amount is to be repatriated to Spain. Accordingly this process - and should it be sanctioned by the court - requires treasury permission before any payment can be made outside Namibia.

[47] Treasury, as defined, means the Minister of Finance or an officer in the department of finance who deals with such a matter on authority of the minister.

[48] For this purpose, any reference, statement, account or information required to be submitted to the minister, shall be submitted to the fourth respondent for consolidation and transmittal to the minister.

[49] All this is to occur in the statutory context set by Section 46(1) of the Bank of Namibia Act, where the Bank of Namibia acts as agent for government in the administration of any law relating to exchange control.

[50] The release of the retained funds to Spain will be governed by the Exchange Control Regulations, which are administered by the 4th Respondent as statutory agent for government.

[51] Such an administration in turn is subject to- and it must be done in accordance with the instructions and directions of the minister.

[52] Even if I accept Mr Heathcote's argument that Section 46(1) creates the 4th Respondent as a statutory agent to which the common law principles of agency do not apply – and - for which proposition no authority was cited - and in respect of which the question can be raised, why the legislature then deemed it necessary to use the concept 'agent', which concept usually implies also the concepts of 'mandate' and 'principal' and were even the Constitution, in Article 5, for instance makes reference to the government and its agencies, implying government control over such agencies - this assumption does still not effectively counter the fact that in terms of the Exchange Control Regulations, an official that deals with any matter contemplated in such regulation deals with such matters ultimately on the authority of the Minister of Finance.

[53] It does not take much to accept that the relief sought pertains to- or is sought in relation to a matter contemplated in the Exchange Control Regulations, which matters are to be dealt with under the authority of the minister.

[54] I thus agree with Mr Obbes that the *Kleynhans* case must be distinguished from this case on the facts. A similar conclusion which must be arrived at also as far as the *South Line Retail* case is concerned, as the role assigned by the regulations to the minister in this case are not merely 'advisory' or given 'for the setting of a policy framework' for instance. While it is certainly so that the minister can give instructions or directives in relation to any law relating to Exchange Control the minister here, in contra- distinction to the relied upon cases, has been placed in a position of authority over any officer who deals with any matter contemplated in the Exchange Control Regulations. It is this aspect which in my view - and on a proper interpretation of the applicable legislative framework- indicates that the Minister of Finance most certainly - and by virtue of this role - has a direct and substantial interest- that is legal interest in this case, which might be prejudicially affected by the orders sought.

[55] To my mind the Government of Namibia has a lesser interest in the orders sought, if it is accepted what has been argued by Mr Heathcote in regard to Section

46(1). I thus find that such interest, although it may be an interest in the wider sense, is not one that satisfies the test, the applicable test to joinder. In any event, and subject to the order for joinder that I will make, the Minister of Finance is in any event to be regarded as the representative of government.

[56] Even if I were wrong in coming to this conclusion I believe that this finding is underscored by two additional considerations, namely,

a) by the requirements set by Section 46(2) which require any return, statement, account or information required to be submitted to the minister by authorised dealers in respect of the provision of any law pursuant to any instructions or directive contemplated in sub section (1) shall be submitted to the 4th Respondent for consolidation and transmittal to the Minister of Finance;

and

b) by the fact that the applicants seek review relief, in so far as this may be necessary, to set aside Exchange Control Regulation 22(d), a matter in which the Minister of Finance, as the responsible minister, most certainly will have a direct and substantial interest which may be affected by any order the court might make in this regard.

[57] In view of the findings made above, the 4th respondent's argument - that the Minister of Finance should be joined to these proceedings - succeeds and the request - to join the government - as a party, fails.

[58] In the result I make the following orders:

1. The first respondents *in limine* objection based on the applicant's non-compliance with Rules 32(9) and (10) is dismissed.
2. The applicants and the first respondent are each to pay their own costs in this regard. I exercise my discretion in regard to cost in this particular manner, as I believe that the applicant has just escaped the consequences pertaining to the non-compliance with Rules 32(9) on the strength of the vagueness of Rule

32(9) and particularly in view of the criticism that can be levelled in regard to the applicant's failure to once again meaningfully engage particularly the 1st respondent during the period 11 April to 20 April 2018 immediately prior to the launching of this interlocutory application.

3. The fourth respondents *in limine* objection based on the non-joinder of the Minister of Finance is upheld with costs, such costs to include the costs of one instructed- and one instructing counsel.
4. The *in limine* objection based on the non-joinder of the Government of the Republic of Namibia is not upheld.
5. The applicants are to effect service of all papers in this matter on the Minister of Finance, c/o the Government Attorney, on or before 25 March 2019.
6. The Minister of Finance is to indicate on or before 12 April 2019 whether or not he intends to oppose the matter or participate in any manner in the currently pending proceedings.
7. The case is postponed to 17 April 2019 at 08h30 for a Status hearing and in order to determine the further conduct of this case.

H GEIER
Judge

APPEARANCES

- APPLICANTS: R Heathcote SC (with him SJ Jacobs)
Instructed by Van der Merwe-Greeff Andima Inc.,
Windhoek
- 1st RESPONDENT: MG Boonzaier
Instructed by Government Attorney, Windhoek
- 2nd & 3rd RESPONDENTS: JAN Strydom
Instructed by Dr Weder, Kauta & Hoveka Inc.,
Windhoek
- 4th RESPONDENT: DF Obbes
Instructed by ENS Africa Inc., Windhoek