

“ANNEXURE 11”
Practice Directive 61

IN THE HIGH COURT OF NAMIBIA

Case Title: HEINRICH JACOB ROOS V SCOIN TRADING (PTY) LTD	Case No: HC-MD-CIV-ACT-CON-2017/01862
	Division of Court: MAIN DIVISION
Heard before CLAASEN A J	Date of hearing: 09 APRIL 2019
	Delivered on: 09 April 2019
Neutral citation: <i>Roos v Scoin Trading (Pty) LTD</i> (HC-MD-CIV-ACT-CON-2017/01862)[2019] NAHCMD 125 (09 April 2019)	
Results on merits: Not on the merits.	
The order: Having heard Mr Jones on behalf of the Applicant, and Mr Wylie on behalf of the Respondent, and having read the documents filed of record: IT IS ORDERED THAT: 1. The matter is struck from the roll with costs.	
Reasons for orders:	
<p>[1] This is a rescission of judgment application that was heard on 09 April 2019. The applicant was represented by Mr Jones and the respondent by Mr Wylie.</p> <p>[2] The respondent in its heads of argument raised a point in limine that the notice of motion was a nullity because it was issued under the hand of a person who is not a legal practitioner enrolled and authorised to practice as such in terms of Namibian law. At the time of the hearing the court requested the parties to address the court on the point in limine, where-after the point was upheld and the matter was struck from the roll with costs.</p> <p>[3] The issue concerns the conflicting information as to who issued the notice of motion. It was signed by Mr</p>	

Du Plooy, though the words 'Gary Seagal care of' appeared underneath that signature. The next line contained the words 'H D Bossau & Co' and thereafter the words 'per N.C. Du Plooy' appears.

[4] Mr Wylie's submitted that Mr Gary Seagal was not a legal practitioner enrolled and authorised to practice as such in terms of the Practitioner's Act. He relied on the case of *Compania de Pescuit (SA) v Rosteve Fishing Pty Ltd and another*¹. In casu, Mr Du Plooy signed the Notice of Motion on behalf of Mr Segal as evidenced by the words 'care of', but Mr Segal is not a legal practitioner enrolled and authorised to practice as such in terms of the Legal Practitioners Act.²

[5] Mr Jones contended that the *Compania de Pescuit* case hailed from a different time, when there was no e-justice system as the rational was to protect the public against persons who masquerade as legal practitioners. Mr Jones argument is rejected as palpably wrong. It was not established that the e-justice system has amended s 21 of the Legal Practitioners Act and therefore rendered the *Compania de Pescuit* inapplicable.

[6] It was not disputed that Mr Seagal is applicant's attorney in South Africa and is not admitted to practise as legal practitioner in Namibia. S 21(1)(c) of the Legal Practitioners Act provides that a person who is not enrolled as a legal practitioner shall not issue out any summons or other process, or commence, carry on or defend any action, suit or any proceeding in any court of law in the name of or on behalf of any other person, except in so far as it authorised by any other law.

[7] Consequently I rejected Mr Jones's argument that that the principles in the *Compania de Pescuit* case are not applicable in terms of the rules of court. The difficulty the court has with the notice of motion is that when a different person's name is stated under the signature of a different person and the words 'care of' appear, it is misleading as to the legal practitioner who issued the document. Furthermore, the 'care of' situation is not acceptable. The court in *Van Rensburg v Wilderness Air Namibia (Pty)(Ltd)*³ held the notice of motion signed by a person not being not one who is enrolled and authorised to practice as a legal practitioner to be void ab initio. In *Van Rensburg* the person who signed the notice of motion was not enrolled as a legal practitioner, and 'c/o Hohne & Co' appeared on the notice of motion. Hohne & Co is a firm of legal practitioners in Namibia but the notice of motion was signed by the applicant's attorney in South Africa who is not a legal practitioner and authorised to practice as such in terms of the Legal Practitioner's Act.

¹ 2002 NR 297 (HC)

² Legal Practitioners Act 15 of 1995

³ (LC 66/2011) [2013] NALCMD 34 (24 October 2013)

[8] It was for these reasons that the court concluded that the defect in the notice of motion was not cured by the signature of the 'c/o' legal practitioner Mr Du Plooy who is authorised to practice in Namibia. In the result the point in limine was upheld and the matter was struck from the roll with cost.

Judge's signature:	Note to the parties:
	Not applicable.
Counsel:	
Applicant	Respondent
Mr J P Jones Instructed by H.D. Bossau & Co	Mr T M Wylie Instructed by Ellis Shilengudwa Inc