

“ANNEXURE 11”
Practice Directive 61

IN THE HIGH COURT OF NAMIBIA

Case Title: PAUL JOSEF LIMON VS OTHENE KARUIHE	Case No: HC-MD-CIV-ACT-OTH-2019/00045
	Division of Court: MAIN DIVISION
Heard before TOMMASI J	Date of hearing: 16 May 2019
	Delivered on: 19 June 2019
Neutral citation: <i>Limon v Karuihe</i> HC-MD-CIV-ACT-OTH-2019/00045 [2019] NAHCMD 197 (19 June 2019)	
Results on merits: Not on the merits.	
The order: Having heard Mr K. HARASEB on behalf of the Plaintiff, and Mr N MHATA on behalf of the Defendant, and having read the documents filed of record: IT IS ORDERED THAT: <ol style="list-style-type: none">1. The application for condonation is struck from the roll.2. The Defendant is ordered to pay the costs limited in terms of the provisions of Rule 32(11).3. Matter is postponed to 3 July 2019 at 14h15 for a status hearing.	
Reasons for orders:	
<p>[1] This matter was enrolled for the hearing of an application for Summary Judgment. The Plaintiff instituted action against the defendant for the amount of N\$110 000 which constitutes an amount paid in advance for rental, in terms of a lease agreement which was cancelled before the lease period expired.</p> <p>[2] In terms of a joint case plan filed, the Plaintiff was to file a report in terms of Rule 32(10) on or before 14 March and, if the parties fail to reach an amicable solution, the Plaintiff had to file his application for summary judgment on or before 18 March 2019. The Defendant was to file an opposing affidavit on or before 1 April 2019. These dates were adopted in the case planning</p>	

order.

[3] The report in terms of Rule 32 (10) was filed on 13 March 2019 and the Application for Summary Judgment was filed on 18 March 2019. The Defendant filed an unsigned opposing affidavit on 1 April 2019 and the signed affidavit was filed on 14 May 2019.

[4] The Defendant filed an application for condonation for the late filing of the unsigned affidavit. The issue was raised whether there has been compliance with Rule 32 (9) and 32 (10) for the application for condonation. Counsel for the Defendant submitted that the court has a discretion to condone non-compliance with Rule 32(9) and 32 (10). He submitted that the judges of the high court deal differently with this requirement to comply with Rule 32 (9) and 32 (10).

[5] This court in a number of cases ruled that the application for condonation is an interlocutory application and the parties thus have to comply with the mandatory provisions of Rule 32 (9) and 32 (10) (See *Mukata v Appolus 2015 (3) NR 695 (HC)*; *Bank Windhoek Ltd v Benlin Investments CC 2017 (2) NR 403 (HC)*). I agree and see no reason why these decisions should not find application in this case.

[6] In view of the above, the application for condonation, without dealing with the merits of the application, must be struck for lack of compliance with Rule 32 (9) and (10)

Judge's signature:	Note to the parties:
	Not applicable.
Counsel:	
Plaintiff	Defendant
Mr Haraseb On behalf of Plaintiff LorentzAngula Inc.	Mr N Mhata Sisa Namandje & Co. Inc