

“ANNEXURE 11”  
Practice Directive 61

**IN THE HIGH COURT OF NAMIBIA**

<b>Case Title:</b> ALBERTUS HORN // FRANCOIS HORN	<b>Case No:</b> HC-MD-CIV-MOT-GEN-2019/00213
	<b>Division of Court:</b> HIGH COURT (MAIN DIVISION)
<b>Heard before:</b> HONOURABLE MR JUSTICE ANGULA, DEPUTY JUDGE-PRESIDENT	<b>Date of hearing:</b> 27 JUNE 2019
	<b>Delivered on:</b> 27 JUNE 2019
<b>Neutral citation:</b> <i>Horn v Horn</i> (HC-MD-CIV-MOT-GEN-2019/00213) [2019] NAHCMD 218 (27 June 2019)	
<b>The order:</b>  Having heard <b>Mr Dicks</b> , counsel for the applicant, and <b>Ms Campbell</b> , counsel for the respondent, and having read the documents filed of record:  <b>IT IS ORDERED THAT:</b>  1. The respondent is ordered to pay the applicant's costs on a party-party scale such costs include the costs of one instructed counsel and one instructing counsel.  2. The acceptance by the applicant, of the respondent's tender, which tender was made before the commencement of these proceedings, is hereby made an order of court and the respondent is ordered to restore possession of the solar panels into possession of the applicant by installing the position they were before the act of spoliation. The restoration must be effected on or before 3 July 2019.  3. The matter is removed from the roll and considered finalized.	
<b>Reasons for orders:</b>  <i>The order sought by the applicant to the effect that the respondent pays the applicant's costs on an attorney and own client scale is refused for the following reasons:</i>	

[1] There are no special circumstances present in the present matter or allegations by the applicant that the the respondent's conduct have been vexatious or frivolous and or that the respondent has been guilty of reprehensible behaviour.

[2] The respondent's version, which has not been denied by the applicant, which prevails, on the *Plascon Evans* rule, is that he thought that he was entitled to remove the panels without the consent of the applicant. It was further his version, that once he received legal advice that he was not in law permitted to despoil the applicant of possession of the panels, he tendered to restore possession either by replacement with other panels alternatively, with original panels. The offer was made on 20 June 2019, but was rejected without any counter-offer from the applicant. The offer was only accepted today, 27 June 2019, in court by counsel for the applicant.

[3] Under the circumstances the court is of the view that the matter could have been settled earlier and further costs would have been avoided. Litigants should be slow to rush to court with disputes which could be resolved my merely sitting around a table and engaging each other *bona fide* with an aim of finding a solution. Such an approach is particularly necessary, in matters such as the present one, where a family dispute is involved.

[4] The court therefore takes into account that this matter concerns a dispute between two brothers, therefore a punitive order of costs would only serve to fuel the already acrimonious relationship, as evident from the papers before court.

[5] The court further takes into account the respondent's readiness to pay the applicant's costs on a party-party scale. In the court's view, this demonstrates the respondent's acknowledgement of his error. This view should however not be construed as the Court condoning the respondent's unlawful conduct. Self-help conduct will not be tolerated or condoned by the Courts.

<b>Judge's signature:</b>	<b>Note to the parties:</b>
	Not applicable.

<b>Counsel:</b>	
<b>Applicant</b>	<b>Respondent</b>
G Dicks <i>Instructed by</i> Dr Weder, Kauta & Hoveka Inc., Windhoek	Y Campbell <i>Instructed by</i> Behrens & Pfeiffer, Windhoek