

Practice Directive 61

IN THE HIGH COURT OF NAMIBIA

Case Title: BELINDA GAROES V DANA BEUKES	Case No: HC-MD-CIV-ACT-OTH-2018/00470
	Division of Court: HIGH COURT(MAIN DIVISION)
Heard before: HONOURABLE LADY JUSTICE PRINSLOO, JUDGE	Date of hearing: 16 AUGUST 2019
	Delivered: 16 AUGUST 2019
Neutral citation: <i>Garoes v Beukes</i> (HC-MD-CIV-ACT-OTH-2018/00470) [2019] NAHCMD 294 (16 August 2019)	
Results on merits: Application for leave to appeal. Merits previously considered.	
<p>The order:</p> <p>Having heard BELINDA BEUKES, IN PERSON and JOLANDA VAN DER BYL, on behalf of the First Defendant and having read the Application for HC-MD-CIV-ACT-OTH-2018/00470 and other documents filed of record:</p> <p>Whereas the Plaintiff filed an application for leave to appeal.</p> <p>And whereas the judgment dated 22 March 2019 constitutes a final order, the Plaintiff has an automatic right to appeal to the Supreme Court of Namibia and no leave is required.</p> <p>IT IS HEREBY ORDERED THAT:</p> <ol style="list-style-type: none"> 1. Matter is removed from the roll: Case Finalized 	

Reasons for orders:

[1] On 15 October 2018 this court handed down a judgment¹ on an exception setting aside plaintiff's particulars of claim and she was given leave to file amended particulars of claim. Plaintiff subsequently filed her amended particulars of claim, however the defendant's again brought an application for exception on the ground that the amended particulars of claim was still excipiable. On 22 March 2019 this court made the following order²:

1. The application for recusal is refused.
2. The exception is upheld.
3. The action is therefore dismissed.
4. No order as to costs

[2] The aforementioned decision constituted a final order and/or judgment which quashed the action in this matter altogether and therefore section 18(3)³ of the High Court Act⁴ does not apply. In the ordinary course, section 18(3) applies to instances where an interlocutory order is sought to be appealed against and such appeal will be subject to leave of the court which has given the judgment or made the order. However, in this assistance a final order was granted which disposed of the matter and the plaintiff therefore had a right of appeal to the Supreme Court. Parties are directed to have regard to the case of *Knouwds NO (in his capacity as Provisional Liquidator of Avid C Investment Corporation (Pty) Ltd v Josea and Another*⁵ wherein the court held that 'In terms of s 18(3) of the High Court Act interlocutory orders are not appealable as of right and need the leave of that court . . .' However in this instance as plaintiff's claim was dismissed, the plaintiff has an automatic right to appeal and no leave to appeal is required.

[3] The plaintiff therefore does not require any leave from this court to prosecute her appeal.

¹ Belinda Garoes vs Dana Beukes (HC-MD-CIV-ACT-OTH-2018-00470) [2018] NAHCMD 324 (15 October 2018).

² Garoes vs Beukes (HC-MD-CIV-ACT-OTH-2018/00470) [2019] NAHCMD 63 (22 March 2019).

³ (3) No judgment or order where the judgment or order sought to be appealed from is an interlocutory order or an order as to costs only left by law to the discretion of the court shall be subject to appeal save with the leave of the court which has given the judgment or has made the order, or in the event of such leave to appeal being refused, leave to appeal being granted by the Supreme Court.

⁴ 16 of 1990.

⁵ 2010 (2) NR 754 (SC).

[23] My order is therefore as set out above.	
Judge's signature	Note to the parties:
	Not applicable.
Counsel:	
Applicant	Respondent
Jolanda van der Byl Office of the Government Attorney	Ms Belinda Beukes In Person