

IN THE HIGH COURT OF NAMIBIA

Case Title: AVELINUS ELIA v MINISTER OF SAFETY AND SECURITY & 2 OTHERS	Case No: HC-MD-CIV-ACT-OTH-2017/02151
	Division of Court: HIGH COURT(MAIN DIVISION)
Heard before: HONOURABLE MS JUSTICE PRINSLOO	Date of hearing: 05 DECEMBER 2019
	Date of order: 05 DECEMBER 2019 Reasons delivered on: 12 DECEMBER 2019
Neutral citation: <i>Elia v Minister of Safety and Security</i> (HC-MD-CIV-ACT-OTH-2017/02151) [2019] NAHCMD 551(05 December 2019)	
Result on merits: Merits not considered.	
The order: IT IS HEREBY ORDERED THAT: 1. The defendants are granted leave to appeal the judgment handed down on 12 February 2019.	
Reasons for orders:	
<p>1. The applicant (defendants in the main action) seeks leave to appeal to the Supreme Court against part of the judgement and the orders made on 12 February 2019.</p> <p>2. At the core of the matter lies the interpretation of s 133(4) of the Correctional Services Act¹ and the question raised is whether the court was correct in finding that plaintiff must amend his particulars of claim after determining that he did not comply with the section.</p> <p>3. It is the case of the applicants that the effect of the court's judgment is that the respondent is given a stay of execution to proceed <i>laissez faire</i> with its proceedings without complying with a fundamental step in the proceeding and that it would set a precedent that non complying parties would use for future reference.</p>	

¹ 9 of 2012.

4. The applicants further maintains that the court should have dismissed or struck the pleadings to allow the plaintiff to serve statutory notice as required by s 133 of the Act.

5. Having considered the argument advanced on behalf of the applicants this court agrees that another court might come to a different conclusion and therefor in light of the provisions of section 18 (3) of the High Court Act of Namibia² leave is hereby granted to the applicants to appeal.

6. It should also be noted that this application for leave to appeal was regarded as unopposed as the respondent (plaintiff in the main action) failed to comply with the court order of 16 August 2019 directing the parties to file their heads of argument three and five days prior to the hearing date respectively. The hearing of the matter was scheduled for 6 November 2019 and the respondent's heads of arguments were due to be filed on 01 November 2019. Due to the judge's unavailability as a result of a bereavement in her family the matter had to be postponed to 5 December 2019 for hearing of the application. The respondent filed his heads of argument only on 18 November 2019 and instead of filing a condonation application explaining his non-compliance the respondent elected to engage the opposing party regarding the late filing to obtain an extension, contrary to rule 54(2) of the Rules of Court, which specifically provides that parties may not, by agreement, extend any time lines as set out by a court order. The blatant disregard of the court order caused the court, after hearing the respondent, to attend to this matter as an unopposed matter.

Judge's signature:	Note to the parties:
Counsel:	
Applicant	Respondent
Mr J Ncube Of Office of the Government Attorney	Ms L Mbaeva Of Brockerhoff Legal Practitioner

² 19 of 1990.