

“ANNEXURE 11”

IN THE HIGH COURT OF NAMIBIA MAIN DIVISION

Case Title: The Government of the Republic of Namibia (Represented by the Minister of Mines and Energy) v Jornaise Shifotoka	Case no: HC-MD-CIV-ACT-OTH-2019/03112 Division of Court: MAIN DIVISION
Heard before: Honourable Lady Justice Tommasi J	Delivered on: 19 March 2020 Reasons delivered on: 19 March 2020
Neutral citation: <i>The Government of the Republic of Namibia (Represented by the Minister of Mines and Energy) v Shifotoka</i> (HC-MD-CIV-ACT-OTH-2019/03112 [2020] NAHCMD 107 (19 March 2020))	
The order: <ol style="list-style-type: none">1. Condonation is granted for the plaintiff's non-compliance with paragraph 4 of the court's case plan order dated 17 September 2019 relating to the parties' discovery;2. The automatic bar of the plaintiff to file its discovery affidavit is hereby uplifted;3. The plaintiff is to pay the defendant's cost of the application limited in terms of Rule 32 (11)4. The Plaintiff must file its discovery affidavit and exchange its discovery bundle on or before 26 March 2020 ;5. The defendant is allowed to file a supplementary discovery affidavit, if any, on or	

before 9 April 2020;

6. The matter is postponed to 22 April 2020 for initial mediation hearing referral (reason: mediation court connected)
7. The parties must file a joint case management conference report on or before 17 April 2020.

Reasons for order:

TOMMASI J,

For these reasons I have made the above order;

- [1] This is an application for condonation by the Plaintiff for failing to comply with the court order dated 17 September 2019 i.e for Plaintiff to file its discovery affidavit and to exchange discovery bundles on or before 30 November 2019.
- [2] Mr Khupe's Affidavit attaches the contract of Mr Haufiku and it shows that his contract came to an end on 17 September 2020. The filing of Defendant's plea was on 30 September 2019. The plaintiff thus were afforded 2 months to file discovery affidavits and to exchange bundles. Ms Matsi went on leave on 9 December 2020. Mr Khupe avers that the matter was assigned to him after the discovery affidavit was due to be filed which was on 30 November 2020.
- [3] Ms Matsi could indeed have attended to this matter from 30 September to 30 November 2019 and the explanation in the affidavit is that she could not assist in the timeous preparation and filing of the plaintiff's discovery pleadings as she went on maternity leave at the relevant time.
- [4] In the Rule 32 (10) report it was explained to the Defendant's L/P that she is, due to pressure in other matters, unable to assist. There was no reply to this invitation to resolve the matter amicably. There was at least an attempt made by the applicant but no effort was made by Defendant to respond.

[5] The plaintiff set out the prospects of success and this is challenged by the defendant on the basis that the plaintiff failed to mention the other parties with whom it is alleged the defendant acted in cahoots with. The plaintiff sets out its case against the defendant and it is not evident from the pleading that it relies on common purpose. The claim furthermore relates to recovery of public funds and this is a factor the court must consider.

[6] I am satisfied that there is no mala fides on the part of the plaintiff. Not setting a precedent, and in order to expedite the determination of the real issues I am prepared to condone the plaintiff's late filing of the application for condonation by a day. The delay in bringing the application was not inordinate and for non-compliance with Rule 32(10). I am of the view that the prejudice herein would be addressed by an appropriate cost order.

[7] In the premise the following order is made:

1. Condonation is granted for the plaintiff's non-compliance with paragraph 4 of the court's case plan order dated 17 September 2019 relating to the parties' discovery;
2. The automatic bar of the plaintiff to file its discovery affidavit is hereby uplifted;
3. The plaintiff is to pay the defendant's cost of the application limited in terms of Rule 32 (11).
4. The Plaintiff must file its discovery affidavit and exchange its discovery bundle on or before 26 March 2020 ;
5. The defendant is allowed to file a supplementary discovery affidavit, if any, on or before 9 April 2020;
6. The matter is postponed to 22 April 2020 for initial mediation hearing referral (reason: mediation court connected)
7. The parties must file a joint case management conference report on or before 17 April 2020.

Judges' signature:	Note to the parties:
	These parties must file a draft mediation referral order for a Joint Status report.
Counsel:	
Applicant	Respondent
<i>Mr M Khupe of Government Attorney's Office</i>	<i>Mr K Amoomo of Kadhila Amoomo Legal Practitioners</i>