

“ANNEXURE 11”
Practice Directive 61

IN THE HIGH COURT OF NAMIBIA

Case Title: IMMANUEL KAULUMA ELIFAS & ANOTHER vs FILLEMON SHUUMBWA NANGOLO & 7 OTHERS	Case No: HC-MD-CIV-MOT-GEN-2018/00187
	Division of Court: HIGH COURT (MAIN DIVISION)
Heard before: HONOURABLE MR JUSTICE GEIER	Date of hearing: 12 MAY 2020
	Delivered on: 10 JUNE 2020
Neutral citation: <i>Kauluma v Nangolo</i> (HC-MD-CIV-MOT-GEN-2018/00187) [2020] NAHCMD 215 (10 June 2020)	
IT IS ORDERED THAT: 1. The Rule 61 application filed on 13 January 2020, is hereby dismissed with costs. 2. The late- filing of the Rule 97(3) application is not condoned. 3. The applicants in the said condonation application are to pay Mr Amalwa’s costs occasioned by the condonation application on the attorney and own client scale, such costs are also not to be capped as provided for in Rule 32(11). 4. The case is postponed to 17 June 2020 at 08h30 for a Status Hearing.	
Following below are the reasons for the above order:	
<u>The background facts</u> [1] On the 16 th of October 2019 it was agreed between the parties that the main application, pending before court, had become moot, due to the passing of the first applicant, save for the issue of costs, which issue was stood over for determination. [2] The respondents, who were insisting on costs, were ordered to deliver their intended application in terms of Rule 97(3) on or before the 29 th of October 2019. This application	

was brought on the 1st of November 2019, three days out of time, in respect of which a condonation application was launched on 4 December 2019.

[3] In the Rule 97(3) application costs were then sought against Mr Naeman Amalwa, the main deponent to all papers filed in behalf of the first and second applicants, in the main application.

[4] Mr Amalwa opposed the Rule 97(3) application and also the said application for condonation in respect of which he filed answering papers.

[5] The answering papers filed in opposition to the condonation application were delivered on 13 December 2019.

[6] On 13 January 2020 a Notice of Irregular Proceedings, in terms of Rule 61 of the Rules of Court was filed on behalf of the applicants in the Rule 97(3) and condonation applications asserting that the notice to oppose the condonation application, delivered on 4 December 2019 and the subsequent answering affidavit filed on behalf of Mr. Amalwa, opposing the condonation application on 13 December 2020, were irregular and in breach of various rules of court. Mr Amalwa also opposed the Rule 61 application.

[7] On 31 January 2020 the Court postponed the matter to the 31st of March 2020, for hearing of the condonation and Rule 61 applications.

[8] Due to the ensuing national lockdown the case was not heard on 31 March 2020 and in accordance with the 4 May 2020 'Revised Roadmap for the High Court whilst the State of Emergency persists' the parties waived their right to oral argument and agreed that the Court determine these applications with reference to the written heads of argument.

[9] It so becomes clear that 2 interlocutory applications require determination.

[10] As the Rule 61 application is aimed at eliminating the opposition to the condonation application that application will be dealt with first as its outcome will determine whether or not the condonation application will have to be determined on an opposed basis or not.

The Rule 61 application

[11] What is striking in this regard - and this aspect immediately springs to one's notice - is that the Notice in terms of Rule 61 - attacking the validity of the Notice to Oppose - delivered on 4 December 2019 - and the answer filed on 13 December 2019 - was filed only on 13 January 2020 and served on Shikongo Law Chambers – Mr Amalwa's legal practitioners - eventually on 16 January 2020.

[12] A Rule 61 application is however to be brought within 10 days of becoming aware of the irregularity.¹ It becomes clear immediately that the Rule 61 application was delivered in both instances more than 10 days after the filing of the complained of documents.

[13] The respondents – the applicants in the Rule 61 application – however did not file a founding affidavit in support of their 'Notice of Irregular Proceedings'.² It is thus not apparent – and the applicants fail to address this aspect – when they became aware of the irregularities complained of.

[14] The notice to oppose and the answering affidavit to the condonation application where however filed on E-Justice. Not only does the E-Justice system alert the legal practitioner of record, in this instance Mrs Angula, immediately that a document has been filed on a particular court file, but the system also alerts the practitioner in question of such fact via an additional e-mail that is sent to such practitioner. It is because of these double notifications more than likely that the complained of steps immediately came to the knowledge of the applicants' legal practitioner on the 4th and 13th December 2019 respectively. Yet the Rule 61 application was filed well outside the 10- day- window on 13 January 2020 and served even later on 16 January 2020. It must in such circumstances be inferred that the Rule 61 application delivered in this instance was delivered out of time and should be dismissed for that reason alone.

[15] What is more is that the applicants in their Rule 61 Notice complain of the following :

'1.1 that the said Naeman Amalwa is not a party to the proceedings and has not been

¹ See Rule 61(1).

² That they were entitled to do so appears from *Veldman and Another v Bester* 2011 (2) NR 581 (HC) at [18] to [25] (under the old rules) and *Namibia Competition Commission v Namib Mills (Pty) Ltd* (HC-MD-CIV-MOT-GEN-2017/00061) [2019] 465 (7 November 2019) (under the new rules).

joined as party as required by the rules of the court and the legal practitioner representing the said Naeman Amalwa are not on record of the proceedings as required by the rules of court.

1.2 Furthermore, no leave of the court was sought to permit the said Naeman Amalwa to be joined as a party to the proceedings.

1.3 Please take notice that as result of this irregularity, the 1st and 7th respondent are prejudiced as to the filing and services of documents, enforcement of certain rules of court, and generally because the said Naeman Amalwa has not provided his full details and address as required by rules.

1.4 In absence of such information the respondents are unable to establish his *locus standi* and other procedural advantages provided for in the rules.

1.5 The said Naeman Amalwa was obliged to comply with the rules of court as aforesaid despite the court order dated 4 December 2019. The court order is not a bar for the said Naeman Amalwa to comply with the rules of court and he should have been advised accordingly.

1.6 The opposition filed, and the answering affidavit is therefore irregular and should be set aside with costs.'

[16] In the heads of argument filed in support of this application it was then submitted that:

'The essence of the irregular proceeding is the fact that Mr. Amalwa is not a party to the proceeding and has not been joined as a party as required by the rules of court and the legal practitioners representing Mr. Amalwa are not on record as required by the rules of court. It is for this very reason that there is no rule 32(9) and (10) compliance in this matter, as the respondents cannot engage Mr. Amalwa or the legal practitioner purportedly on record.'

[17] This stance constitutes an amazing turnabout, given the events which preceded the eventual filing of the Rule 61 application.

[18] Mrs Miller, on behalf of Mr Amalwa, has aptly summarised these occurrences in her heads of argument. She did so as follows:

'On 6 September 2019 Mr Amalwa filed an affidavit indicating his wish, as deponent to the various affidavits, not to continue with the application.

On the same day, 6 September 2019, Shikongo Law Chambers withdrew as legal practitioners for the applicants in light of the passing of the first applicant and the re-constitution of the second applicant, coupled with the lack of instructions from the Government attorney and the attorneys (AngulaCo) for the (newly constituted) second applicant.

On 12 September 2019 the respondents filed a status report indicating their intention to bring an application in terms of Rule 97(3) to hold Mr Amalwa liable for costs.

In light of the intention of the respondents as aforesaid, Mr Amalwa instructed Shikongo Law Chambers to represent him, being an interested party, in the intended application against him for costs.

On 17 September 2019 the matter appeared before Justice Geier in F Court, Windhoek. Mr Jacobs appeared for the respondents, assisted by a member of AngulaCo. Ms Miller appeared for Mr Amalwa.

The proceedings of 17 September 2019 were transcribed by Hibatchi on instructions of Shikongo Law Chambers. The transcript is attached as Annexure "A".

The transcript shows that:

- a. Ms Miller was given audience to appear on behalf of Mr Amalwa.
- b. The court considers Mr Amalwa an interested party.³
- c. Mr Jacobs insisted that Ms Miller file a Notice of Representation.⁴
- d. Ms Miller agreed, informing the Court that she would be unable to do so on e-justice since Mr Amalwa is not a party to the proceedings, and does not have a code. She undertook to file the Notice of Representation through the office of the Registrar.⁵
- e. Mr Miller also informed the Court that she would not receive alerts if documents are filed on e-justice, again because Mr Amalwa is not a party.
- f. Mr Jacobs undertook on behalf of the respondents that all documents to be filed on behalf of the respondents will be served on Shikongo Law Chambers.⁶
- g. The court allowed Ms Miller to come on record as the legal representative of Mr Amalwa.
- h. The court considered the service of documents to be an issue.⁷

Ms Miller consequently filed a Notice of Representation through the E-justice Service Bureau on the same date, 17 September 2019.

On 16 October 2019 the Court made the order which became the subject of the condonation application. That order ordered the respondents to file their intended application in terms of Rule 97(3) on or before 29 October 2019 and further granted Mr Amalwa leave to file answering affidavits to the respondents' application in terms of Rule 97(3).

On 1 November 2019 AngulaCo filed the Rule 97(3) application, with notice to both Shikongo Law

³ Transcript of 17 September 2019 – Page 32, Line 20.

⁴ Transcript, Page 16, line 12 – 15.

⁵ Transcript, Page 32, lines 12 – 17.

⁶ Transcript, Page 32, lines 27 – 29, Page 33, lines 4 – 5.

⁷ Transcript, Page 32, lines 9 – 10.

Chambers and the Government Attorneys.

On 15 November 2019 Mr Amalwa filed his notice to oppose as well as his answering affidavit.

On 4 December 2019 the matter appeared before Justice Geier again. An application for condonation was not yet filed by the respondents for the late filing of their Rule 97(3) application. The court ordered the respondents to deliver their application for condonation before close of business that day – the 4th of December.

On the same day the court ordered Mr Amalwa to file his answering papers to such condonation application on or before 13 December 2019.

On 4 December 2019 AngulaCo filed the application for condonation.

Despite Mr Jacobs' undertaking on 17 September 2019 in open Court, and the Court's concern expressed regarding the service of documents, AngulaCo intentionally did not serve that application on Shikongo Law Chambers. It in fact did exactly what Mr Jacobs promised not to do and we quote him: *"My Lord we will not pull one pass my Learned Friend my Lord"*.⁸

Having regularly checked e-justice in lieu of receiving alerts, and having expected the application to be filed, the application for condonation was down-loaded from E-justice by Ms Miller. Mr Amalwa duly filed his answering affidavit thereto, in accordance with the court order of 4 December 2019.

The respondents did not file a replying affidavit to the answering affidavit of Mr Amalwa.

In a bizarre twist AngulaCo, on 13 January 2020, filed a Notice of Irregular Proceedings in terms of Rule 61. This despite the Court order of 4 December 2019, ordering Mr Amalwa to file his answering affidavit before 13 December 2019.'

[19] It so appears that the applicants to the Rule 61 application – through their legal practitioners – that is through instructed- and instructing counsel - where from the outset – ie on 17 September 2019 already - acutely alerted by Mr Amalwa's legal practitioner to all the problems they now complain of. They thus immediately obtained knowledge of the irregularities that were to come and that they then complained of many months later. In spite of reacting thereto appropriately they allowed the court to regulate the exchange of affidavits in respect of the Rule 97(3) application by way of the agreed to Court Order of 17 September 2019. In spite of such knowledge they also failed to attack the notice to oppose such application and the answering affidavits, filed subsequently, in response thereto, on 15 November 2019, by way of the Rule 61 mechanism.

[20] The main application had become moot by then. The only aspect that precluded the finalisation of the entire case was the issue of costs. When the applicants in the Rule 61 application then brought their intended Rule 97(3) application and allowed Mr Amalwa to oppose same through the filing of answering papers on 15 November 2019, this

⁸ Transcript, Page 33, lines 4 – 5.

advanced the main case further towards its conclusion. In other words further steps were taken '*in the cause*'. This, however, is precisely what precludes a party from resorting to the Rule 61 mechanism.⁹ Also this aspect must be fatal to the Rule 61 application launched only in January 2020.

[21] So - even if I have been wrong in coming to the conclusion that the Respondent's Rule 61 application was brought out of time, warranting the dismissal of the Rule 61 application on that score alone, the taking of further steps in the cause, with knowledge of the irregularities now complained of, put the final nail in the 'Rule 61 coffin', disentitling the applicants subsequently to resort to the mechanisms afforded to them by Rule 61.

[22] It follows that the Rule 61 application must be dismissed with costs and that the pending condonation application is to be determined on an opposed basis.

The application for condonation for the late filing of the Rule 97(3) application

[23] Here it is clear that the Rule 97(3) application was delivered 3 days out of time. The degree of such late-compliance is thus, at first glance, relatively minor. Normally a Court would be inclined to condone such late-compliance.

[24] Viewed against this background it was thus not surprising that this is also the first argument advanced by the respondents, in the main case, in support of this application.

[25] They argue further that Mr Amalwa suffered no real prejudice as a result as he managed to deliver his answering papers thereto in time, conceding at the same time however that his allowed time, to do so, had been shortened by their late-compliance.

[26] Importantly they rely further on the contentions that the application for condonation was brought '*... as soon as the respondents became aware of the non-compliance ...*' and that the first respondent, Mr Nangolo, has '*... set out a detailed explanation for the delay in filing the (condonation) application ...*'. They continue to point out that :

'It is common cause that the application brought was agreed to have become moot, save for the issue of costs. Mr. Amalwa had no authority to bring any application on behalf of OTA or the late Omukwaniilwa. The authority of Mr. Amalwa in both capacities was challenged and this is

⁹ See Veldman v Bester at [73] to [74].

evident from the papers in the main applications.

The proceeding brought on behalf of the first applicant were extinguished in terms of the rules of this court. In view thereof, the parties who were authorised by the applicant are obliged to pay the cost of the respondents because the respondents are the successful parties.

Mr. Amalwa, who was the deponent to the applications brought was never mandated by OTA in his capacity as senior traditional councillor, nor was he authorised by the late Omukwaniilwa to launch any of these applications as he had consistently asserted, as such he must bear the cost of those application personally.

The respondents did not bring these applications and are entitled to receive the costs when application are not proceeded with.

From the above it is clear that the respondents have great prospect of success in the application for costs. The respondents would be severally financially prejudiced should the Honourable court dismiss the application for costs.'

[27] It was thus submitted in conclusion that the respondents have complied with both the procedural and substantive requirements and should thus be granted the sought condonation.

[28] The picture that emerges from the case advanced in opposition to the sought condonation, by Mr Amalwa, is however dramatically different.

[29] The first point that is made is that the condonation application was unduly delayed. Here the Court was asked to take into account that the timeline, set by the Court Order of 17 October 2019, for the delivery of the Rule 97(3) on 29 October 2019, was not complied with. Upon enquiries made on behalf of Mr Amalwa to Angula Co, in this regard, it was indicated on 30 October 2019 by Angula Co that the necessary condonation application would be brought on the next day, ie. by 31 October 2019. This self-imposed deadline was not met and still had not been met by 4 December 2019, when the case came back to Court. It was for these reasons that the Court had to regulate the exchange of papers for the still to be brought condonation application on 4 December 2019.

[30] In regard to the explanation offered for the non-compliance with the time line set in the Court Order of 17 October 2019 for the delivery of the Rule 97(3) application the

following further deficiencies were exposed. Here it was submitted that :

'The explanation for the non-compliance with the court order of 16 October 2019 is not reasonable and therefore not acceptable:

- a) The main reason advanced for non-compliance with the Court order of 16 October 2019 is that the deponent to the founding affidavit had to attend a workshop in Tsumeb from 28 to 31 October 2019.¹⁰ He concedes that the period provided for filing the Rule 97(3) application (16 October to 29 October) was sufficient, but that it was not ideal for him¹¹.
- b) This, with respect, does not constitute an acceptable and/or reasonable explanation which warrants the granting of condonation. Especially so in light thereof that the order was granted on 16 October 2019 already while the deponent was unavailable only from 28 October 2019.
- c) It only explains the period from to 27 October 2019 to 29 October 2019.¹² No explanation whatsoever is provided for the period from 16 October to 27 October 2019. It is evident from the founding affidavit that no action was taken from the date of the court order until 29 October 2019 when the deponent was able to telephonically consult with Ms Angula.
- d) No reason is advanced why a telephonic consultation was not possible from 16 October 2019 to 27 October 2019.'

[31] It was further pointed out that the applicants prospects of success had not been properly/adequately addressed in the condonation application as all that was alleged in this regard by Mr Nangolo was that ' ... *"In the circumstance, the respondent has made out a good case for the costs order sought and enjoy prospects of success as set out in its papers ..."*.

[32] The following defects to the papers where then exposed :

- a) The Rule 97(3) Application cites the deceased Immanuel Kauluma Elifas as 1st applicant and the re-constituted OTA as 2nd applicant, in spite of the fact that it must be common cause that neither of those applicants are the *applicants* in the Rule 97(3) application. The citation of the applicant(s) in the Rule 97(3) application is accordingly defective. The application should be dismissed on this ground alone;

¹⁰ Par 3 of the founding affidavit – page 4.

¹¹ Par 4 of the founding affidavit – Page 3.

¹² Par 3 – 5 of the founding affidavit – page 4.

- b) In contradiction to the Rule 97(3) Application, the deponent, Mr Nangolo, in paragraph 2 of his founding affidavit states that this is “his” application;
- c) Mr Amalwa is not cited as a party to the proceedings. If relief is sought against Mr Amalwa, he must be cited as a respondent. This non-joinder alone is a ground to dismiss the application;
- d) The deponent Nangolo incorrectly states that Mr Amalwa instituted the main applications and withdrew the main applications.¹³ This is impossible as he is not a party to the proceedings. He merely deposed to affidavits on behalf of the applicants who have either since (a) passed away or (b) where reconstituted. He did not institute the application, nor did he withdraw any application.

[33] It was further noted and pointed out that Mr Nangolo was apparently advised that, when litigation is extinguished due to the death of a litigant, the person who was authorized by the deceased litigant would be responsible for the costs *because the respondents are the successful parties*,¹⁴ but that Mrs Miller’s search of the Rules did not find any substantiation for the statement that deponents, who attest to affidavits on behalf of litigants, are liable for costs as if the deponent is that litigant.

[34] In any event it was submitted that the respondents are not to be regarded as “the successful parties” merely as a result of the death of the first applicant. The merits of the applications had not been adjudicated upon inter alia because of the death of the first applicant. No finding had been made on the merits. It was accordingly submitted further that the advice so received was flawed. In this regard the concession made by Mr Nangolo that Mr Amawla was indeed authorised by the first applicant was highlighted.

[35] Further *in limine* objections raised on behalf of Mr Amalwa where inter alia that :

- a) Rule 97(3) applies only to instances where a notice of withdrawal was filed. No notice of withdrawal was filed *in casu*. The application lodged by AngulaCo on behalf of the respondents thus had no legal basis;
- b) The requirements set by Rules 65(2) were not complied with in

¹³ Par 2 of the founding affidavit in the Rule 97 application.

¹⁴ Nangolo stated in paragraph 9 of the founding papers to the Rule 97(3) application: “*I was advised that the proceedings brought on behalf of the first applicant were extinguished in terms of the rules of court. In view thereof, the parties who were authorized by the first applicant are obliged to pay the cost of the respondents because the respondents are the successful parties.*”

circumstances where relief was claimed from Mr Amalwa but where he was not cited and where Mr Amalwa was not even served with the application, in spite of counsel's express undertaking given in this regard;¹⁵ and

- c) That with reference to the approach to disputed facts in motion proceedings Mr Amalwa's version should in any event prevail on the merits.

[36] Finally – and with reference to Rule 56(1)(d) - it was highlighted that there were a number of previous instances of non-compliances which indicated the respondents' lack of respect for the Rules of Court and the Court's Orders . The condonation sought should thus be refused with an adverse costs order.

Resolution

[37] When it so comes to the determination whether or not the respondents, the applicants in the condonation application, have shown good cause, it appears, in the first instance, that:

- a) They have indeed failed to provide a full, detailed and accurate explanation for their defaults. In this regard it was correctly exposed that they did fail to explain the entire period during which the delay occurred. This holds true not only for the period 17 October 2019 to 29 October 2019, where at least there is an attempt at a partial explanation, but particularly also for the period 30 October 2019 to 4 December 2019.
- b) The condonation application was, in the circumstances, also unreasonably delayed and not brought with reasonable promptitude. So much becomes clear alone from Mr Nangolo's concession made that sufficient time, for the Rule 97 application was granted, and from the telephonic consultation Mr Nangolo had with Mrs Angola, on 29 October 2019, and the subsequent written undertaking, given on 30 October by Mrs Angola, that the necessary condonation application would be brought the following day, from which Mr

¹⁵ Compare Rule 65: "(2) Where relief is claimed against a person or where it is necessary or proper to give a person notice of such application, the notice of motion must be addressed to both the registrar and that person, otherwise the notice must be addressed to the registrar only."

(4) Every application, other than one brought ex parte in terms of rule 72, must be brought on notice of motion on Form 17 and true copies of the notice and all annexures thereto must be served, either before or after the application is issued by the registrar, on every party to whom notice of the application is to be given."

Nangolo's and Mrs Angula's acute realisation becomes apparent that condonation would be required, necessitating the promised application, but where the bringing of such application was nevertheless delayed further, for inexplicable reasons, to 4 December.

- c) The First to Seventh Respondents' Rule 97(3) application indeed suffers from obvious serious defects, as was exposed by Mrs Miller, on behalf of Mr Amalwa. It does for example not take much to understand that the provisions of Rule 97 regulate the situation where a party to a *lis* delivers a Notice of Withdrawal and fails in such notice to consent to pay costs, in which circumstances the other party may apply, in terms of Rule 97(3), for an order for costs.¹⁶ The applicants in the main application at no stage delivered a Notice of Withdrawal and in such circumstances the respondents' resort to the provisions of the said Rule where ill-advised. It so appears that contrary to the averment by Mr Nangolo that the Rule 97(3) application ' ... *have great prospect of success* ... ', it would seem that this is actually not so.

[38] It should further be mentioned that the timeline, for the filing of the Rule 97(3) application, embodied in the Court Order of 17 October 2019, was self-imposed. The Court enquired from counsel appearing for the Respondents, on that occasion, by when they felt they would be able to deliver the intended Rule 97(3) application. The date volunteered was the 29th of October 2019. Upon confirmation, from counsel appearing for both parties, the exchange of papers was then regulated by Order of Court accordingly. That the timeline so ordered was fair and sufficient, (at least for his legal practitioners), was also confirmed by Mr Nangolo himself. This timeline did apparently not suit Mr Nangolo, who obviously felt that it was more important for him to attend a workshop than to comply with the obligations imposed on him as a result of the agreed to Court Order. A party is of course free to approach a Court at any time, in terms of Rule 55, for the extension of a period of time for the taking of a step set in a Court Order. This was also not done.

[39] While the abovementioned aspects, on their own, would already have merited the dismissal of the condonation application, there are two further aspects, which make it clear, beyond doubt, that the Court should exercise its discretion, in this instance, in

¹⁶ Compare the provisions of Rules 97(1) and (3).

favour of Mr Amalwa.

[40] The first aspect is that it would appear that the delay in this instance was wilful.

[41] Before any party can however be said to be wilful the following elements should be present :

- a) there should be knowledge of the step that should be taken;
- b) there should be a deliberate refraining from taking that step;
and, while being a 'free agent'
- c) there should be an indifference as to the consequences the default may have.¹⁷

[42] From the facts underlying this case all three requirements are met. There can be no doubt that both Mr Nangola and Mrs Angula were all along aware within what time the Rule 97(3) had to be brought - and – once the telephonic consultation between Mr Nangola and Mrs Angula had occurred - on 29 October 2019 - that a condonation application would also have to be brought. Despite such knowledge the promised condonation application was neither delivered on 31 October 2019, or at any time immediately thereafter. It required the case management proceedings of 4 December to oblige the respondents to eventually deliver the application, and only once they had been ordered to do so.

[43] The inference to be drawn from the manner in which these obligations were approached by the respondents and their legal practitioner already go a long way in proving their indifference to the possible consequences flowing from their inaction. This indifference is however further underscored by their track record and overall conduct in this case - and this is the second aspect - in respect of which it had been pointed out that there were a number of previous instances of non/late compliances with the Rules of Court and Case Management Orders. They were listed as follows :

- 'a) The condonation application dated 5 October 2018 for the non-compliance with Rule 66 – late filing of the respondents' answering affidavit. The condonation application was filed approximately two months after the date of non-compliance;
- b) The condonation application dated 14 December 2018 – late filing of the

¹⁷ See for instance generally the discussion appearing in Erasmus : Superior Court Practice' at p B1-202 (Service 38,2012)

- respondents' answering affidavit in the recusal application;
- c) The condonation application dated 29 January 2019 for the late filing of the respondents' answering affidavit in the second application for recusal.'

[44] The conclusion from this is inescapable - namely that the first to seventh respondents, the applicants in this condonation application – in whose favour condonation was granted on three previous occasions – take condonation for granted. This also seems to be the explanation for their indifferent attitude towards the possible consequences of their further default, which must then also be classified as wilful.

[45] The conduct of the respondents must, in the circumstances, also be considered as egregious. It follows that the sought condonation can for these reasons not be granted.

Costs

[46] As far as the consequent issue of costs – in such circumstances - is concerned, I believe that nothing further needs to be added.

[47] Accordingly - and as a mark of the Court's disapproval of the aforementioned conduct of the respondents and their legal practitioner - I will award the costs flowing from their application for condonation on the attorney and own client scale against the applicants, which costs are also not to be capped, as provided for in Rule 32(11) of the Rules of Court.

Judge's signature	Note to the parties:
	Not applicable.
Counsel:	
Applicant	Respondent
Mrs Miller <i>of</i> Shikongo Law Chambers	Mrs Angela <i>of</i> AngulaCo. Inc.