**REPUBLIC OF NAMIBIA**

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**HIGH COURT OF NAMIBIA, MAIN DIVISION, WINDHOEK**

**RULING *I.T.O.* PRACTICE DIRECTIVE 61**

HC-MD-CIV-MOT-GEN-2019/00434

In the matter between:

**ALEX MABUKU KAMWI KAMWI APPLICANT**

and

**THE PROSECUTOR-GENERAL OF NAMIBIA FIRST RESPONDENT**

**THE MAGISTRATE OF KATUTURA**

**MAGISTRATES’ COURT SECOND RESPONDENT**

**Neutral Citation:** *Kamwi v The Prosecutor General of Namibia (*HC-MD-CIV-MOT-GEN-2019/00434) [2020] NAHCMD 284 (10 July 2020)

**Coram**: Masuku J

**Heard on**: 11 June 2020

**Delivered: 10 July 2020**

**ORDER**

1. The application for the filing of the answering affidavit is refused.
2. The applicant is entitled to disbursements incurred in opposing this application.
3. The matter is postponed to 16 July 2020 for further directions on the progression of the matter.

**REASONS FOR THE ORDER**

**MASUKU J:**

[1] Serving before court is an application for condonation by the Prosecutor-General, the first respondent, for the late filing of an answering affidavit in this matter. The application is opposed by the applicant, Mr. Alex Mabuku Kamwi Kamwi.

[2] The brief history of the application is that the applicant, Mr. Kamwi, approached this court for an order permanently staying his prosecution before the Regional Court in Katutura. This application was brought in terms of Article 12(1) of the Constitution.

[3] The Prosecutor-General (PG), filed a notice to oppose the application but failed to file an answering affidavit within the period stipulated by the court, hence the present application for condonation.

[4] The application for condonation is predicated on the founding affidavit of Ms. Lovisa Naambo Ihalwa, a legal practitioner in the employ of the Office of the Government Attorney.

[5] In it, she explains the reasons why there was a failure to comply timeously with the order regarding the filing of the answering affidavit. She attributes the delay chiefly to the fact that she was busy handling other matters at the time, with the file having been belatedly assigned to her after Mr. Mehluli Ndlovu left the chambers and returned to his native country.

[6] I will not dwell on the explanation given for the delay nor on the propriety of Ms. Ihalwa, the PG’s legal practitioner, deposing to the founding affidavit. The latter is mentioned particularly when full regard is had to *Prosecutor-General v Paolo and Another.[[1]](#footnote-1)* In this case, Angula DJP decried and called upon legal practitioners to desist from willy-nilly filing affidavits in matters in which they serve legal representatives to the parties.

[7] It is trite law that an applicant for condonation should satisfy the court that he or she has provided a reasonable and acceptable explanation for the delay in complying with the court order or direction, as the case may be. Secondly, the applicant therefor should satisfy the court that he or she, has reasonable prospects of success on the merits of the matter.[[2]](#footnote-2)

[8] In this regard, the requirements in the immediately preceding paragraph must necessarily appear in the founding affidavit filed in support of the application. They may not be brought to court in argument in an embellishing address by the applicant’s counsel.

[9] I have read the applicant’s founding affidavit a number of times, expecting possibly different results latterly. Unfortunately, the result, after the numerous rounds of reading is one – there is not even a feeble attempt by the applicant for condonation to deal with the aspect relating to the prospects of success at all.

[10] In the premises, and for the aforegoing reasons, the court cannot be satisfied that this is a proper case in which to grant the application for condonation as prayed. The court is not entitled to go beyond the allegations made on oath in such applications and the respondent’s fate is in this regard sealed by its own failure to comply with mandatory requirements of the law.

[11] In the premises, the application for condonation is refused.

Order

1. The application for the filing of the answering affidavit is refused.
2. The applicant is entitled to disbursements incurred in opposing this application.
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T. S. Masuku

Judge

APPEARANCES:

APPLICANT: A. Kamwi,

The applicant in person

Windhoek

RESPONDENT: J. Gawises

Of the Office of the Government Attorney

Windhoek

1. 2017(1) NR 178 (HC), p. 184 para 16. [↑](#footnote-ref-1)
2. *Petrus v Roman Catholic Archdiocese* 2011 (2) NR 637 (SC) p. 640, para 10. [↑](#footnote-ref-2)