

REPUBLIC OF NAMIBIA



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 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

[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 foregoing 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 2017(1) NR 178 (HC), p. 184 para 16.

² *Petrus v Roman Catholic Archdiocese* 2011 (2) NR 637 (SC) p. 640, para 10.

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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