

REPUBLIC OF NAMIBIA



IN THE HIGH COURT OF NAMIBIA, MAIN DIVISION, WINDHOEK

JUDGMENT

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: 22 JULY 2020
	Delivered on: 22 JULY 2020
Neutral citation: <i>Kauluma v Nangolo</i> (HC-MD-CIV-MOT-GEN-2018/00187) [2020] NAHCMD 411 (22 July 2020)	
IT IS ORDERED THAT: 1. There will be no order as to costs. 2. The matter is removed from the roll: The case is to be regarded as finalised.	
Following below are the reasons for the above order:	
<p>[1] Since the court dismissed the first to seventh respondents' quest to obtain a costs order against Mr Amalwa on the 10th of June 2020, on certain technical grounds,¹ there was a subsequent request for directions made² and that request I equated to a request for legal advice, which I refused for the reason that, it is not for the court to advise the parties on how to proceed in a particular matter, as that is an aspect, in the particular</p>	

¹ See: *Kauluma v Nangolo* (HC-MD-CIV-MOT-GEN-2018/00187) [2020] NAHCMD 215 (10 June 2020).

² This request was made under cover of the 1st to 7th Respondents' Status Report dated 16 June 2020 – at para 5.

realm of the legal practitioner, seized with the task to act on behalf of a party or parties.

[2] Such refusal to give directions is thus not to be equated with a refusal to determine the issue of costs.

[3] In fact there was never a refusal from the court's side to determine this issue. The doors of the court are open, where open and will be open. It is for the parties to bring their issues to the court and it is for the court to resolve.

[4] Subsequent to the judgment delivered on 10 June 2020 the first to seventh respondents were given further opportunities to seek the resolution of the costs issue. In fact they have been given that opportunity since the 16th of October 2019 and even further after the delivery of the judgment on 10 June 2020, in the course of which they were also given the opportunity to consider alternative avenues for purposes of recouping- or resolving the issue of costs.³ Also this invitation was declined by the respondents⁴. Subsequently to this, there was obviously an express election not to persist with the costs issue,⁵ but this decision was clearly premised on an incorrect basis.

[5] The real underlying reason for this seems to be the inability to advise their clients appropriately, that is the inability of the respondents' legal practitioners, to advise their clients, appropriately, on the way forward.

[6] In the interim these respondents had also been granted the opportunity to show cause, why, this matter should not be regarded as finalised.⁶

[7] They have not shown cause, why this matter should not be regarded as finalised. In fact, the contrary is true, as they have elected not to pursue the costs avenue any further as the Status Report of 15 July 2020 shows.

[8] This position was also confirmed again today by Ms Angula, appearing for the first to seventh respondents, during the hearing of this matter.

[9] In such premises there will be no order as to costs and the matter will be regarded

³ Compare : Order dated 17 June 2020.

⁴ Compare : 1st to 7th Respondents' Status Report dated 29 June 2020.

⁵ Compare : 1st to 7th Respondents' Status Report dated 15 July 2020.

⁶ Compare : Order dated 1 July 2020.

as finalised.	
Judge's signature:	Note to the parties:
	Not applicable.
Counsel:	
1st – 7th Respondents	Mr Amalwa
M Angula of AngulaCo. Inc.	S Miller of Shikongo Law Chambers