

HIGH COURT OF NAMIBIA



MAIN DIVISION, WINDHOEK

INTERLOCUTORY RULING

Case Title: AGRICULTURAL BUSINESS DEVELOPMENT AGENCY // OMHALANGA MILLS (PTY) LTD	Case No: HC-MD-CIV-ACT-CON-2019/04295
Heard before: HONOURABLE MR JUSTICE MILLER, ACTING	Division of Court: HIGH COURT (MAIN DIVISION)
Neutral citation: <i>Agricultural Business Development Agency v Omhalanga Mills (Pty) Ltd</i> (HC-MD-CIV-ACT-CON-2019/04295) [2020] NAHCMD 480 (21 October 2020)	Date of hearing: 20 October 2020 Delivered on: 21 October 2020
The order: Having heard Ms Malambo , counsel for the applicant/plaintiff and Mr Bangamwabo , counsel for the respondent/defendant and having read other documents filed of record: IT IS ORDERED THAT: <ol style="list-style-type: none"> 1. The application for condonation for the late discovery of evidence to be adduced at trial is granted. 2. The plaintiff is granted leave to discover the documents as attached to the affidavit in support of this application. 3. The plaintiff is ordered to pay the costs of this application, which costs should not be limited to the amount of N\$20 000 as prescribed by the Rules of the High Court. 	
Following below are the reasons for the above order:	
<p>[1] This matter was set down for hearing on the continuous floating roll and was due to commence on 19 October 2020. When the matter was called before me on 19 October 2020, the plaintiff moved an application to make additional discovery of a number of invoices which were not discovered as part of the documents upon which the plaintiff seeks to rely to substantiate its</p>	

claim. The plaintiff seeks condonation for the failure to make timeous discovery of the documents.

[2] The defendant opposes the application and claims that it is being prejudiced, in as much as it is now faced with the discovery of documents which it knows nothing about. Counsel for the defendant submits that the late discovery of the documents will have the effect that it will have to amend its plea and witness statements in so far as it will have to deal with these documents.

[3] The trial has not commenced. It is impossible for me, not having heard any evidence to determine what impact, if any, the late discovery of the documents will have on the determination of the issues between the two parties. Clearly, the respective parties are of the view that it will have some impact. Time will tell as the saying goes.

[4] I am satisfied that the failure to make timeous discovery is due to an oversight on the part of the plaintiff and its legal representatives. Having said that, the fact remains that this trial which was due to start on 19 October 2020 has now been delayed and the hearing may well have to be postponed to a further date. It is needless to say that it is an unsatisfactory state of affairs for more reasons than one. It cannot be a situation without consequences in the form of an adverse cost order.

[5] The application is consequently granted. The plaintiff is ordered to pay the costs of the application. This is a proper case where the amount of the costs should not be limited to the sum of N\$20 000, and I order that the limitation provided for by the Rules of the High Court should not apply.

Judge's signature:	Note to the parties:
	Not applicable.
Counsel:	
Plaintiff	Defendant
M Malambo <i>of</i> Sibeya & Partners Legal Practitioners, Windhoek	F Bangamwabo <i>of</i> FB Law Chambers, Windhoek