

REPUBLIC OF NAMIBIA



IN THE HIGH COURT OF NAMIBIA, MAIN DIVISION, WINDHOEK

Case Title: JENNIFER GATSI vs MARIANNE NGEIDENGWA, PATIENCE NYANGOVE, MAX HAMATA, MAX MEDIA CONGLOMERATE	Case No: HC-MD-CIV-ACT-DEL-2019/01124
	Division of Court: High Court Main Division
Heard before: Honourable Justice Schimming-Chase AJ	Delivered: 29 October 2020
Neutral citation: <i>Gatsi v Ngeidengwa</i> (HC-MD-CIV-ACT-DEL-2019/01124) NAHCMD 496 (29 October 2020)	
Order: 1. Ms S Kahengombe is hereby ordered to pay the Plaintiff's wasted costs (in respect of the vacated trial dates in this matter) of 22 October 2020, <i>de bonis propriis</i> .	
Reasons for order: [1] Samuel & Co Legal Practitioners came on record for the third defendant on 16 June 2020. [2] The Pre-Trial order was filed on 8 July 2020, and adopted and made an order of court on	

12 July 2020.

[3] The matter was set down for hearing on the continuous Roll from 19-23 October 2020 by order of court dated 27 July 2020.

[4] At Roll call on 16 October 2020, the trial was scheduled to commence on 20 October 2020.

[5] On 20 October 2020, there was no appearance by a legal practitioner from Samuel & Co.

[6] The third defendant appeared in person and informed the court that his legal practitioner was in the Northern Division appearing in another matter, but that the said practitioner would be available on 21 October 2020. The third defendant offered to pay the wasted costs of the day out of his own pocket and the plaintiff's representative agreed to the postponement till 21 October 2020.

[7] On 21 October 2020, the third defendant informed the court that his legal practitioner was stuck in the north and could not fly back due to technical difficulties with her flight. Again, by agreement between the parties the trial was postponed to 22 October 2020, and the third defendant tendered wasted costs out of his own pocket.

[8] On 22 October, Ms Kahengombe of Samuel & Co appeared in court. She sought to tender an explanation for her failure to appear from the Bar. This was not accepted. Accordingly an order was made requiring a full explanation on oath for the delays caused by her non-appearance, and to show cause why she should not be ordered to tender the wasted costs of 22 October 2020 *de bonis propriis*.

[9] In her affidavit, Ms Kahengombe stated the following:

9.1 Her employment with Samuel & Co started on 3 August 2020, and she took over the litigation department at the firm from that date.

9.2 Since she started, the legal secretary employed by Samuel & Co and her have been going through the litigation files and updating diaries.

[10] Ms Kahengombe recalls being informed by the legal secretary about the upcoming trial on 12 October 2020. But the legal secretary apparently did not inform Ms Kahengombe exactly when the trial date was. The secretary also informed that the third defendant had not placed the firm in funds, but she would follow up and revert to Ms Kahengombe.

[11] In the meantime Ms Kahengombe had two other matters set down for hearing during the

same period in the Northern Division. She therefore travelled to the North on 19 October 2020. She commenced with the trial on 19 October 2020, to continue on 20 October 2020.

[12] During lunch on 20 October 2020, the legal secretary informed her of the trial set down for the week. Ms Kahengombe could not do anything at the time as she was in the North. However she was planning to travel back on 20 October and as soon as she arrived, she would explain the situation.

[13] In the meantime and during the evening of 20 October 2020, Ms Kahengombe started preparing for the hearing but could not fly back on 21 October 2020 due to technical difficulties that delayed the flight back. On the afternoon of same date, it appears her instructions were terminated.

[14] The first glaring concern, is the attempt to place the responsibility for being informed about the trial date on the legal secretary. With the introduction of Ejustice, all the legal practitioner had to do was enter the case number on the Ejustice platform, and all information about the trial date would appear. This could have been done in August 2020 when she took over the litigation department, or on 12 October 2020 when she was informed by the legal secretary of the upcoming trial, especially given the fact that the secretary was not able to give her the exact trial date. No effort seems have to been made to establish the trial date at all.

[15] The second concern was the attempt to prepare for a trial for the third defendant literally the night before. This could only be prejudicial to the defendant.

[16] Thirdly, the attitude of the legal practitioner to attempt to explain the state of affairs from the Bar without even taking the court into its confidence and explaining the delay via affidavit, was disappointing. This is to be considered, in light of the fact that the matter was postponed for two days due to her unexplained absence.

[17] This is conduct unbecoming of a legal practitioner and the court expresses its disappointment with an order that the wasted costs of 22 October be paid by Ms Kahengombe *de bonis propriis*.

<p>Judge's signature:</p>	<p>Note to the parties:</p>
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	Not applicable.
Counsel:	
Plaintiff:	Defendant:
<p>Ms A Delport of Delport Legal Practitioners Windhoek</p>	<p>Ms Kahengombe the erstwhile legal practitioner Mr Rigaud Beukes of Henry Shimutwikeni & Co Inc Windhoek</p>