

“ANNEXURE 11”

Practice Direction 61

**IN THE HIGH COURT OF NAMIBIA**

Case Title: <i>Eugene Crüys v Hendrin Crüys (born Joubert)</i>	Case No.: HC-MD-CIV-ACT-MAT-2018/04629
	<b>Division of Court:</b> High Court (Main Division)
<b>Heard/trie</b> d before: Honourable Mr Justice B Usiku J	<b>Date of hearing:</b> 18 February 2020
	<b>Delivered on:</b> 18 February 2020
<b>Neutral citation:</b> <i>Crüys v Crüys</i> (HC-MD-CIV-ACT-MAT-2018/04629) [2020] NAHCMD 57 . (18 February 2020)	
<p><b>The Order:</b> Having heard <b>Adv. Garbers - Kirsten</b> on behalf of the Plaintiff/Respondent and <b>Adv. Van Vuuren</b>, on behalf of the Defendant/Applicant and having read documents filed of record:</p> <p><b>IT IS ORDERED THAT:</b></p> <ol style="list-style-type: none"><li>1. The applicant’s condonation application for late filing of the rule 32 (10) report is condoned.</li><li>2. The respondent’s point in limine on the basis that applicant’s rule 90 application is improper, is dismissed on account that the application substantially meet the requirements of rule 90.</li><li>3. Interim custody and control of the minor children (in this matter) is awarded to the applicant/defendant pendente lite, subject to the respondent/plaintiff’s right of reasonable</li></ol>	

access, as presently is in place.

4. The respondent/plaintiff is ordered to continue to pay, in the interim, the amount of N\$ 9000 per month, to the applicant, towards the maintenance of the minor children, jointly, till the date of granting of the final order of divorce.
5. The respondent is ordered to continue to pay all the medical dental, pharmaceutical and other related medical expenses, in respect of the minor children and the applicant.
6. The respondent is ordered to continue paying all costs in respect of the minor children's tuition and scholastic expenses (as well as related expenses).
7. It is ordered that the respondent refrains from encumbering the joint estate without prior written permission from the applicant.
8. The respondent is ordered to pay the applicant a contribution towards costs in the amount of N\$ 60 000. The aforesaid amount is to be paid in six equal monthly instalments of N\$ 10 000. The first instalment is to be paid on or before 3<sup>rd</sup> March 2020. Subsequent instalments are to be paid on or before the 3<sup>rd</sup> day of each following month.
9. I make no order as to costs.
10. The matter is postponed to 08 April 2020 at 15:15 for status hearing.
11. The parties must file joint status report on or before 01 April 2020.

**Reasons: Practice Direction 61(9)**

Introduction

This is an application by the applicant (the defendant in the main case), in terms of rule 90. It has been recognised in various matters that the rule 90 procedure contemplates a speedy and fair decision on the application. The process is intended to provide interim and

temporary relief and cannot be determined with the same precision which is afforded by procedure providing detailed evidence. I approach the present application with the foregoing considerations in mind.

Interim custody and control

[1] On the evidence adduced, the primary custody and control of the minor children currently lies with the applicant subject to the respondent's right of reasonable access. It is not alleged that there is intention to remove the children from the applicant. I am of the opinion that I should confirm that the status quo remains *pendente lite*.

Maintenance *pendente lite* in respect of the applicant

[2] The applicant relates that she does not have any source of income. This factor is not controverted. Factors taken into account to determine whether or not applicant is entitled to reasonable maintenance *pendente lite* include, the standard of living of the parties during marriage, the applicant's actual and reasonable requirements and the income of the respondent. The applicant has not set out her basis for claiming amount N\$ 8,792. Applicant's actual and reasonable requirements upon which such amount is based is not clearly set out. This claim shall not be granted.

Maintenance *pendente lite* in respect of the minor children

[4] The respondent has already on his papers, expressed his willingness to continue paying an amount of N\$ 9000, per month for both minor children, jointly.

[5] In view of the respondent's expressed willingness to continue paying maintenance, *pendente lite*, in respect of the minor children, and having regard to his present means, the present application, on this aspect was unnecessary. The same consideration applies to the issues of prayers in respect of payment of medical as well as tuition and scholastic expenses. On these aspects I shall only make an interim order just confirming the status quo.

Payment of N\$ 79,680.25

[6] In my opinion this item is neither maintenance pendente lite, nor a contribution to legal costs etc. and therefore does not fall within the ambit of rule 90. In any event, there is no proof that the applicant is entitled to this relief. I will decline to entertain it.

Payment in respect of domestic worker

[7] There is nothing on the papers to suggest that the applicant requires the services of fulltime domestic worker in the circumstances. This item stands to be declined.

Payment of N\$ 563,745.33 as contribution to legal costs

[8] On the papers before court, I am satisfied that the applicant requires a contribution towards legal costs. However, there is no evidence that the respondent is in position to pay the amount of N\$ 563,745.33 that the applicant seeks. I am of the opinion that an amount of N\$ 60,000, is fair and just in the circumstances.

Restraint from encumbering the joint estate

[9] In my opinion the applicant's prayer on this aspect is justifiable in the circumstances. In addition the respondent does not oppose the granting of this prayer. The prayer shall be granted.

Costs

[10] In the circumstances the applicant has only been partially successful. For the most part the orders to be made as reflected above, to a large extent, only confirm the status quo to continue in the interim. I am therefore of the opinion that the appropriate order in regard to costs is that each party pays own costs.

[11] In the result I make the following order:

1. The applicant's condonation application for late filing of the rule 32 (10) report is condoned.
2. The respondent's point in limine on the basis that applicant's rule 90 application is improper, is dismissed on account that the application substantially meet the requirements of rule 90.
3. Interim custody and control of the minor children (in this matter) is awarded to the applicant/defendant pendente lite, subject to the respondent/plaintiff's right of reasonable access, as presently is in place.
4. The respondent/plaintiff is ordered to continue to pay, in the interim, the amount of N\$ 9000 per month, to the applicant, towards the maintenance of the minor children, jointly, till the date of granting of the final order of divorce.
5. The respondent is ordered to continue to pay all the medical dental, pharmaceutical and other related medical expenses, in respect of the minor children and the applicant.
6. The respondent is ordered to continue paying all costs in respect of the minor children's tuition and scholastic expenses (as well as related expenses).
7. It is ordered that the respondent refrains from encumbering the joint estate without prior written permission from the applicant.
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9. I make no order as to costs.

10. The matter is postponed to 08 April 2020 at 15:15 for status hearing.

11. The parties must file joint status report on or before 01 April 2020.

<b>Judge's signature</b>	<b>Note to the parties:</b>
	Not applicable
<b>Counsel:</b>	
<b>Plaintiff/Respondent</b>	<b>Defendant/Applicant</b>
Adv H. Garbers-Kirsten Instructed by Louis Karsten Legal Practitioner Windhoek	Adv A.S Van Vuuren Instructed by Delpont Legal Practitioners Windhoek