

1REPUBLIC OF NAMIBIA



IN THE HIGH COURT OF NAMIBIA, MAIN DIVISION, WINDHOEK

RULING

Case Title: <i>Standard Bank Namibia Limited</i> <i>and</i> <i>Jan Johannes Bezuidenhout</i>	Case No.: HC-MD-CIV-ACT-CON 2017/03248
	Division of Court: Main Division
	Heard on: 05 March 2021
Heard before: Honourable Mr. Justice Masuku	Delivered on: 20 April 2021
Neutral citation: <i>Standard Bank Namibia Limited v Bezuidenhout</i> (HC-MD-CIV-ACT-CON 2017/03248) [2021] NAHCMD 177 (20 April 2021)	
The order: Having heard Ms. Pause , on behalf of the Applicant and Mr. Silungwe on behalf of the Respondents and having read the pleadings and other documents filed of record: IT IS HEREBY ORDERED THAT: <ol style="list-style-type: none">1. There is no proper application in terms of Rule 108 serving before Court and the matter remains struck from the roll.2. The Applicant is ordered to pay the costs of this application, subject to Rule 32(11).	
Reasons for order:	
MASUKU, J: <u>Introduction</u> [1] Before court for consideration is the question whether or not a matter that has been struck	

from the roll can be set down for a hearing without launching an application for reinstatement.

Background

[2] This matter originates from an application brought by the applicant in terms of rule 108 of the rules of this Court to declare ERF No. 2639 Modesa, Swakopmund, specially executable. The property is registered in the names of the Respondents. The applicant set the matter down on 23 November 2020 for hearing on 04 December 2021.

[3] The applicant failed to comply with amended Practice Directives 58 (4) (b) and amended PD 58 (6). As a consequence, the matter was struck from the roll on 03 December 2020. On 19 January 2021, the applicant re-enrolled the matter on the second motion court roll and set it down for hearing for 05 February 2021. The respondents similarly filed their opposition 05 February 2021.

[4] The respondents' legal practitioner, Mr. Silungwe, contends that there is no proper application before this court because an application for reinstatement ought to have been launched prior to the re-enrolment of the matter. The applicant, on the other hand, is of the view that the court has a discretion to hear the matter whether or not there is an application for reinstatement before it.

[5] In advancing her arguments, Ms. Paulse, for the applicant relies on the fact that the rules of court, in particular the, practice directions do not make provision for reinstatement in motion proceedings. She contends that a formal act is necessary to bring the matter before court and this formal act entails either issuing the application or serving it. She is adamant that the applicant on 19 February 2021 carried out a formal act by doing the following: amending the notice of set down, serving the notice of set down together with the draft court order on the respondents through e-justice and enrolling the matter in terms of the timeline as set out in the practice directions.

[6] The respondents however hold an opposite view, namely that once an application has been struck from the roll, the applicant should apply for its re-enrolment. The respondents rely for their view on the matter of *RBM V TIM (Born Natanga)*¹ where Prinsloo, J made the following lapidary remarks:

'[20] A matter struck from the roll under these circumstances may be re-enrolled upon delivery of an affidavit explaining the non-compliance or failure to appear when the matter is called. It is thus clear that

¹ RBM V TIM (Born Natanga) I 682/2016 [2020] NAHCMD (06 MARCH 2020)

contrary to the argument advanced by the plaintiff's counsel, the striking of the plaintiff's matter from the roll did not terminate the proceedings but rather suspended the proceedings pending the hearing of an application for reinstatement.'

[7] This court is of the considered view that these sentiments find application in this matter. It is common practice that a matter that has been struck from the roll is only enrolled after the delivery of a notice of motion applying for reinstatement, accompanied by an affidavit explaining the reasons for non-compliance and dealing with the question of the prospects of success. Once that has been done and the court is satisfied with the application, it may re-enroll the matter.

[8] The court is in agreement with the respondent that a matter that has been struck from the roll cannot be re-enrolled by way of a notice of set down. If this was the position, parties before court would deliberately not comply with the directions or orders given by the court. They would pick up the matter from where it was struck from the roll without any backlash.

[9] In the matter of *Denk v The Chairperson of the Disciplinary Committee for Legal Practitioners*² this court held that:

'A party seeking reinstatement must provide a reasonable and acceptable explanation for the matter being struck from the roll and that he or she has good prospects of success.'

[10] The respondent correctly cited the matter of *Futshane v King Sabata Dalidyebo Municipality and other*³; in which the court made a distinction between a matter removed from the roll and one that has been struck from the roll, the following was stated:

'....Both Mr Ziwa and Ms Nyobole agree that there is a difference between a matter being simply removed from the roll and a matter being struck from the roll. In the former circumstances, it is open to either party to simply re-enroll the matter for hearing; in the latter circumstances, it is necessary for the applicant to file an explanatory affidavit in order to re-enroll the matter for hearing. Unless this step is taken to reinvigorate the matter, it is for all intents and purposes dormant.'

[11] I am in agreement with the sentiments stated above. They are an accurate reflection of the law in this jurisdiction as well. Parties and lawyers should not confuse the effect of orders striking matters from the roll and those merely removing them from the roll. The former, require an application for reinstatement, whereas, the latter does not.

² *Denk v The Chairperson of the Disciplinary Committee for Legal Practitioners* 2018 NAHCMD 405

³ *Futshane v King Sabata Dalidyebo Municipality and other* (1529/2013) [2014] ZAECHMHC 38 (14 November 2014)

[12] Having regard to the foregoing, I am of the considered view that there is no active matter before this court as it was struck from the roll. The applicant ought to have applied for its reinstatement. The mere setting down of the matter is not sufficient, as striking the matter off the roll serves as some punishment for non-compliance with the rules or the practice directions.

[13] In the result, I make the following order:

1. There is no proper application in terms of Rule 108 serving before Court and the matter remains struck from the roll.
2. The Applicant is ordered to pay the costs of this application, subject to Rule 32(11).

	Note to the parties:
T Masuku Judge	Not applicable
Counsel:	
Applicant:	Respondent:
Ms Paulse Of ENSafrica Namibia (Incorporated as LorentzAngula Inc.)	Mr Silungwe Of Silungwe Legal Practitioners,