



HIGH COURT OF NAMIBIA, MAIN DIVISION, WINDHOEK

Practice Directive 61

IN THE HIGH COURT OF NAMIBIA

Case Title: GRANT CHALMON CLOETE AND OTHERS V GERALD BEUKES AND ANOTHER	Case No: HC-MD-CIV-ACT-CON- 2020/01511
	Division of Court: HIGH COURT(MAIN DIVISION)
Heard before: HONOURABLE LADY JUSTICE PRINSLOO, JUDGE	Date of hearing: Matter adjudicated on the papers
	Date of order: 13 JULY 2021
Neutral citation: <i>Cloete v Beukes</i> (HC-MD-CIV-ACT-CON-2020/01511) [2021] NAHCMD 329 (13 July 2021)	
Results on merits: Merits not considered.	
The order: Having heard KELINA MUSHORE , for the Plaintiffs and having noted the non-appearance of the Defendants and having read the documentation filed of record:	

IT IS HEREBY ORDERED THAT:

1. The application for variation of the pre-trial order dated 13 April 2021 is struck from the roll for failure to comply with Rule 32(9) and (10).
2. The defendants are ordered to pay the costs limited in terms of the provisions of Rule 32(11).

Further conduct of the matter:

3. The Parties are directed to attend Roll Call at 08h30 on 16 July 2021.
4. The First Defendant is cautioned to appear at Roll Call at the time as directed.

Reasons for orders:Introduction

[1] On 28 April 2021 the defendants launched an application to 'revoke' the pre-trial order dated 13 April 2021.

[2] The application was launched without seeking directions from the court and without engaging the opposing parties in an effort to seek an amicable resolution to the matter.

[3] The plaintiffs opposed the current application on a number of grounds of which one of the main grounds of opposition is the non-compliance with rule 32(9) and (10) of the Rules of Court and another ground is that the defendants did not follow the proper procedure for the variation or the amendment of the pre-trial order nor did they file a proposed amended pre-trial order and therefore the opposing counsel did not know what the extent of the intended amendments were to the pre-trial order.

Background

[4] The parties held a pre-trial meeting and filed a joint proposed pre-trial order on 9 March 2021. A pre-trial conference hearing was held on 13 April 2021 and a pre-trial order was issued in the terms agreed upon between the parties in their joint proposed pre-trial order.

[5] The signature of the parties to the proposed order signify their assent to the contents of the proposed order.

Nature of a pre-trial conference order

[6] In *Jin Casings & Tyre Supplies CC v Hambabi*¹ Parker AJ stated that a pre-trial order is a compromise through and through. Parties are usually bound by their pre-trial reports, which constitute their binding compromise.

[7] In terms of rule 23(10) of the Rules of Court issues and disputes not set out in the pre-trial order will not be available to the parties at the trial, except with leave of the managing judge or court granted on good cause shown.

[8] In Court-Managed Civil Procedure of the High Court of Namibia² Damaseb JP made it clear that a party who is desirous to have the pre-trial order amended must therefore do so by invoking rule 32(4) and make out a case on the principles discussed in *IA Bell Equipment Company (Namibia) (Pty) Ltd v Road Stone Quarries CC*³.

Compliance with rule 32(9) and (10)

[9] Having regard to the abovementioned authority I am on the view that an amendment to a pre-trial order as contemplated in rule 26(10) is an interlocutory matter⁴ within the context of rule 32 (1) and (4). Therefore, the defendants had to apply for directions in terms of rule 32 (1) and (4) in respect of the interlocutory proceeding they intended to raise. In addition thereto, before launching the interlocutory proceeding contemplated under rule 26(10) the defendants were required to comply

¹ (I 1522/2008) [2013] NAHCMD 215 (25 July 2013) at para 13.

² 1st ed at para 5-032 p 133.

³ (I 601/2013 & I 4084/2010 [2014] NAHCMD 306 (17 October 2014).

⁴ *Lee's Investment (Pty) Ltd v Shikongo* (HC-MD-CIV-ACT-CON-2016/03394) [2018] NAHCMD 321 (12 October 2018) at para

with rule 32(9) and (10).

[10] If the defendants engaged the plaintiffs' counsel there might not have been a need to launch the application currently before court as it would be clear what amendments they are seeking and the opposing party could apply themselves to it and make an informed decisions whether they will oppose the application or not.

[11] It is clear that the defendants failed to give proper notice of the intended amendment and failed to provide the intended amendment with enough particularity.

Conclusion

[12] As the main focus of this ruling is on the issue of rule 32(9) and (10) I do not deem it necessary to discuss the remainder of the legal points raised by the plaintiff.

[13] In view of the above, the application for amendment of the pre-trial order, without dealing with the merits of the application, must be struck for lack of compliance with rule 32 (9) and (10).

[14] My order is therefore as set out above.

Judge's signature	Note to the parties:
	Not applicable.
Counsel:	
Plaintiffs	Defendants
Kelina Mushore Of Etzold- Duvenhage	Gerald Beukes Appearing in person