“ANNEXURE 11”
Practice Directive 61

IN THE HIGH COURT OF NAMIBIA

Case Title: POPULAR DEMOCRATIC MOVEMENT (PDM) vs MINISTER OF LAND REFORM & 8 OTHERS	**Case No:** HC-MD-CIV-MOT-REV-2018/00457
	Division of Court: HIGH COURT (MAIN DIVISION)
Heard before: HONOURABLE MR JUSTICE GEIER	**Heard on:** 19 August 2021
	Delivered on: 19 August 2021

Neutral citation: *Popular Democratic Movement (PDM) v Minister of Lands & 8 Others* (HC-MD-CIV-MOT-REV-2018/00457) [2021] NAHCMD 436 (19 August 2021)

IT IS ORDERED THAT:

1. The Court reluctantly declines to strike the matter from the roll in terms of Rule 132(10) of the Rules of Court.

2. As a mark of the Court's disapproval of the applicant's conduct - or rather lack thereof - the applicant is directed to pay the Respondents' wasted costs occasioned by the Rule 132 proceedings on the attorney and own client scale, such costs to include the costs of all instructed counsel - where engaged - and one instructing counsel.

3. The provisions of Rule 32(11) of the Rules are not to apply in this regard.

4. The case is postponed to 08/09/2021 at 08:30 for a Status hearing.

5. The parties are to file a Status Report indicating their proposals in regard to the further conduct of the case.

Following below are the reasons for the above order:

[1] It is with great reluctance that I will decline the invitation to strike this matter as an inactive case from the roll and I would like to motivate my decision as follows.

[2] Firstly I wish to state that I agree with counsel for the respondents that the applicant has put up an extremely weak case, which was opposed with merit and which aspect, without considering the detail, would immediately have indicated that the applicant has failed to provide to the court with satisfactory reasons for the inordinate delay and for the period of inactivity in this case.

[3] I am grateful - particularly to counsel for the second respondent - for having filed extremely useful heads of argument. I am also grateful for the industry and effort that has gone, not only into the preparation of the heads of argument but also for helpful detailed affidavit filed by Mr Namandje, in opposition to the applicant's case.

[4] If it would not have been for the heads of argument filed on behalf of the Government Respondents, and their citation of the *Riruako v University of Namibia* matter[1] - from which it became clear that certain obligations are also imposed on a respondent in the modern era of case management and from which it emerges that a respondent, faced with inactivity, also cannot just simply sit back and do nothing[2] - I would - in the normal course of events - and I wish to state this quite categorically - not have hesitated to strike this matter from the roll in terms of Rule 132(10) of the Rules of Court -

[5] If my understanding of the *Riruako* judgment is correct, it means that also the respondents were always entitled to request a hearing or could have asked for the matter to be set down by the managing judge or to request further directions in regard to the further conduct of this matter from the court. This they could have done at any stage. I mention this aspect merely as the first factor that cannot be ignored altogether, although I believe, that from the facts of this case, it emerges with great clarity, that it is the applicant's inactivity that attracts the major portion of the blame in this case.

[6] It appears further that the agreed inactivity - of a period of more than six months - was not quite as accurate as it appeared at first glance from the court file. The court file factually bears out that there was absolutely no activity since the last of respondents answering papers and condonation application where filed on 14 October 2020, until the

[1] *Riruako v The University of Namibia & 4 Others* (A 129/2010) [2016] NAHCMD 168 (14 June 2016).
[2] *Riruako op cit* at [15] for instance.

time that the court issued the Rule 132 hearing notice on 6 May 2021 . It however appears from the Government Respondents' papers that there was some off- the- record activity during March of this year. If I take that into account, as I have no reason to disbelieve that there was an approach made by the applicant, during March, through which apparently a half-hearted attempt was made to resuscitate the Rule 76 application and in respect of which there was some correspondence exchanged between the parties. But the matter was then not pursued further. Again the blame in this regard mainly attaches to the applicant. That, I believe, is the second factor that I will take into account The case is thus not as open and shut as it seemed at first glance, and from which it initially seemed that there was absolutely no activity during a period of more than six months.

[7] Finally there is the public interest component that is involved in this case which cannot be ignored. Although this aspect does not immediately appear to be relevant if regard is had to the wording of Rule 132(10) and where the rule seemingly only requires a judge to consider the period of inactivity and the reasons for it – I nevertheless believe that this enquiry can by no stretch of the imagination be removed entirely from the context of a case. Context, as we know, is relevant in so many fields of the law, that I therefore believe that it would be remiss not to have regard to the context as a factor all together also in an inactive case. In this regard it has become clear from the various contentions of the parties that were made also in regard to the merits of this case that this case involves the exercise of public power and the judicial scrutiny of the exercise of such power and where one would, in principle, have to accept that such a case continues to require the scrutiny of the court in the public interest. This then would be my third main ground for - reluctantly - and I stress –reluctantly - allowing this matter to proceed.

[8] However and as a mark of the court's disapproval of the applicant's inexcusable inactivity in a public interest matter I will make a punitive cost order against the applicant.

[9] In this regard, Ms Angula who appeared for the applicant belatedly attempted to rely on the provisions of Rule 20 of the Rules of Court, which allows for protective costs orders, but as Mr Maasdorp, on behalf of the second respondent, has correctly pointed out, such a request would always have to be made by way of an application which would have had to be brought on notice and in which the exact facts and circumstances underlying such an application, would have had to be set out, entitling the other parties

to respond thereto meaningfully. All this did not occur in this matter.

[10] What we do have before the court is a simple explanation from the applicant's legal practitioner that the applicant, a political party, did not pay its bills, that it obviously did not heed the demands for payment and that, eventually, once the court issued the Rule 132(10) notice, which initially elicited a notice of withdrawal from its legal practitioners, was followed up by a new notice of representation, once a payment arrangement had been made to clear the arears.

[11] Ms Angula has indicated from the bar that these arrears have now been cleared by the applicant and that there are good prospects that the applicant would not again get into the same position in future and thereby delay the further conduct of this case again.

[12] Finally it should be mentioned that there was initially some divergence between counsel whether or not the proceedings before the court where of an interlocutory nature or not and whether or not the provisions of Rule 32(11) of the Rules of Court would thus apply. It was however soon accepted that the rule would apply although these proceedings had been initiated through the Rule 132(10) notice, issued the by the court, as there could be no doubt that they are essentially interlocutory in nature as a procedural ruling would be made as a result and where the merits would not be determined.

Judge's signature:	**Note to the parties:**
Geier J	Not applicable.
Counsel:	
Applicant	**Respondents**
M Angula *of* AngulaCo Inc.	ES Shifotoka and RL Maasdorp *Instructed by* Government Attorney and Sisa Namandje & Co. Inc.