

REPUBLIC OF NAMIBIA



HIGH COURT OF NAMIBIA, WINDHOEK, MAIN DIVISION

RULING

Case Title: Frednard Gideon vs Chairperson: Council of Namibia University of Science and Technology (Nust) and Others	Case No: HC-MD-CIV-MOT-GEN-2020/00472
	Division of Court: High Court
Heard Before: Honourable Justice Miller, Acting	Date of Hearing: 09 September 2021
	Delivered on: 08 October 2021
Neutral Citation: <i>Gideon vs Chairperson: Council of University of Science and Technology (NUST) and Others</i> (HC-MD-CIV-MOT-GEN-2020/00472) 469 [2021] NAHCMD (08 October 2021)	
The Order: Having heard Mr. Namandja, on behalf of the Respondent/ Applicant and Mr. Kauta, on behalf of the 1 st – 3 rd Applicant/ Respondents on 09 September 2021: IT IS ORDERED THAT: a) There shall be no order as to costs. b) The matter remains postponed to 14 October 2021 at 15:00 before Lady Justice Prinsloo for allocation of hearing dates.	
Reasons for Orders:	

[1] What is presently pending before this court is a ruling on costs which emanates from an interlocutory application brought by the first, second and third respondents (hereinafter the respondents) wherein they sought for leave to deliver a further affidavit attached to the notice of motion in the format of a transcript of part of a video clip located on YouTube, to which the link is produced and included in the review record and listed as item 24 in terms of rule 76 of the Rules of the High Court (herein after the rules). In this ruling I will refer to the parties as they appear in the main proceedings.

[2] The respondents contend that the purpose of the transcript is to merely assist the court in its truth finding mission which assistance was triggered as a result of a new matter admittedly raised by the applicant for the first time in his replying affidavit. Further to that the respondents argued that there is a remedy provided for by the rules to an aggrieved party that is of the opinion that something has been brought irregularly before court and that there was no such application brought before court as a result thereof the applicant is not prejudiced by the admission of the transcript as he claims. The respondents prayed for costs to be levied on a punitive scale as result of the opposition being baseless.

[3] The applicant opposed the interlocutory proceeding on the ground that the respondent irregularly proceeded to simply slip in a fourth set of affidavit into the courts file by filing it without the leave of court. I pause here to state that the said affidavit had not been admitted by the court. In addition to that and amongst other grounds the applicant was of the view that the respondents ought to have produced the said transcription if it was relevant to the decision-making process when it initially produced the review record in terms of rule 76. The applicants contend that the respondents were supposed to produce the full and complete record, it didn't produce anything but it made reference to YouTube link as item 24. The respondents are therefore not entitled to a fourth set of affidavit because they misread the applicant's papers. The applicant prays for costs against the respondents not capped in terms of rule 32(11).

[4] During the interlocutory proceeding it appeared to me that the wording of the respondents' notice of motion which included the words "further affidavit" is what prompted the applicants to oppose the interlocutory application, rightfully so. I say so for

the following reason - during the submissions by Mr Namandje appearing for the applicant indicated to the court that the applicant had no issue with the court allowing the respondents to file the transcript on its own without an affidavit. Mr Namandje further submitted that the applicant has an issue with the respondents wanting to be granted leave to file a fourth/ further set of affidavit which would amount to new evidence being placed before the court which is what the applicant in essence objected to. {Own emphasis}.

[5] Mr Kauta for the respondents submitted that the all the respondents have been seeking and are seeking to do is to just supplement item 24 being the YouTube video link with the transcript of the video clip and not to file a further affidavit per se.

Costs

[6] Having dealt with the proceedings before court, I now turn to deal with the issue at hand, being costs. The issue of costs has been dealt with in our jurisdiction extensively and the principles of costs are trite and I do not intend on repeating all of them.

[7] In the *Soltec CC v Swakopmund Super Spar*¹ Masuku J held that:

‘[51] Authority is legion for the proposition that the court does not lightly grant punitive costs. This is so for the reason that as the name suggests, these costs are meted out as a form of punishment and rebuke for untoward conduct or behaviour, connected with the institution or conduct of the proceedings in issue. In this regard, the reluctance to readily grant this scale of costs stems from the right of every person to bring his complaints or alleged wrongs to court for a decision and should, for that reason not be penalised even if he is misguided in bringing what proves to be a hopeless case before court.’

[8] In *Ongwediva Town Council v Shithigona*² Cheda J held:

‘[9] The general rule of such costs is that the court does not normally order a litigant to pay the costs of another litigant on an attorney and client basis unless some special grounds are present. This was the principle adopted and applied in *Conradie v Van Dyk & Another*, 1963 (2) SA 413 (C) 418 E where Corbett AJ stated:

¹ (I 160/2015) [2018] NAHCMD 251 (20 August 2018) .

² (HC-NLD-CIV-MOT-GEN-2017/00017) [2018] NAHCNLD 78 (06 August 2018).

'It is clear that normally the Court does not order a litigant to pay the costs of another litigant on the basis of attorney and client unless some special grounds are present, such as those alluded to in the passage just quoted, viz. that the party has been dishonest or fraudulent, or was transaction under enquiry or in the conduct of the case.'

[9] I am of the considered view that the conduct of the applicant in opposing the interlocutory application is not conduct that warrants a punitive costs order. The applicant only had an issue with the filing of the further affidavit as it was the relief sought by the respondents as per the notice of motion. Accordingly the respondents are not entitled to the punitive cost order they seek.

[10] What remains now is the cost sought by the applicant. As alluded to in the preceding paragraphs is that the general rule is that costs follow the event. The respondents succeeded in part in that their main aim, so it appears, was to merely supplement item 24 which was so granted by this court and not to file a further affidavit as set out in their notice of motion. In these circumstances, I make no order as to costs in favour of the applicant.

[17] In the result, I issue the following order:

- a) There shall be no order as to costs.
- b) The matter remains postponed to 14 October 2021 at 15:00 before Lady Justice Prinsloo for allocation of hearing dates.

Judge's Signature:	Note to the parties:
Counsel:	
Applicant	Respondents

Sisa Namandje Sisa Namandje & Co	Patrick Kauta Dr Weder, Kauta & Hoveka Inc.
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