

“ANNEXURE 11”
Practice Directive 61



IN THE HIGH COURT OF NAMIBIA

Case Title: DIMBULUKENI NAUYOMA vs GOVERNMENT OF THE REPUBLIC OF NAMIBIA & OTHER	Case No: HC-MD-CIV-MOT-GEN-2020/00340
	Division of Court: HIGH COURT (MAIN DIVISION)
Heard before: HONOURABLE MR JUSTICE GEIER	Date reserved: On the papers
	Delivered on: 27 October 2021
Neutral citation: <i>Dimbulukeni Nauyoma v Government of the Republic of Namibia</i> (HC-MD-CIV-MOT-GEN-2020/00340) [2021] NAHCMD 500 (27 October 2021)	
IT IS ORDERED THAT: 1. The condonation application, dated 5 May 2021, is hereby dismissed with costs. 2. The case is postponed to 3 November 2021 at 08h30.	
Following below are the reasons for the above order:	
<p>[1] It is seldom that condonation is sought with such nonchalance, bordering on sheer arrogance, considering the cavalier attitude with which it was brought and argued on behalf of the applicant!</p> <p>[2] The facts underlying this condonation application are simple and straightforward :</p> <p>a) the applicant, who had brought an application for declaratory relief during September 2021, which was opposed and where answering papers had been delivered on 21 October 2021, should have filed his replying affidavits on or before 10 November</p>	

2020, in terms of Rule 66(2) of the rules;

- b) in the joint case management report which was filed on 10 March 2021 it was then indicated that the applicant intended to file his replying affidavits by 24 March 2021;
- c) the promised replying affidavit was however filed only on 5 May 2021, without leave having been obtained;
- d) on the 5th of May 2021 a condonation application was also filed, in which the applicant sought condonation for the non-compliance with the court order of 10 March 2021 and an order seeking the 'upliftment of any automatic bar' pertaining to the filing of the replying affidavit and he sought leave to file the said affidavit;
- e) condonation was sought in a total six paragraphs, the essence of which was contained in two; in order to demonstrate I quote in full :

'I, the undersigned,

KADHILA N AMOOMO

do hereby make oath and state as follows:

1. I am a major male currently practising as a Legal Practitioner and currently employed by Kadhila Amoomo Legal Practitioners situated at No. 18 Adler Street, Windhoek West, Republic of Namibia.
2. I am humbly authorized to depose to this affidavit by the Applicant. I confirm that the facts contained herein are within my personal knowledge and are indeed true and correct.
3. The purpose of this application is to seek condonation from this Honorable Court for our non-compliance with the court order dated the 10th March 2021 in our failure to timeously file our replying affidavit.
4. On the 24th March 2021, I travelled to the north for purpose of arranging a funeral for my late grandmother. As a result thereof, I was unable to attend to my matters including the one before this Honourable Court.
5. I therefore submit that the delay in the filing of the replying affidavit was not wilful. I further submit that there is no prejudice suffered by the Respondents and that the Applicant has good prospects of success because the Squatters Proclamation AG21 of 1985 is in

violation of Article 8, 10, 15 and 16 of the Namibian Constitution.

6. I therefore implore the Honourable Court to condone the non-compliance with its order as aforementioned.'

[3] It immediately becomes clear that the application totally- and thus fatally- omits to address the main period of default, namely the period 10 November 2020 to the 24th of March 2021, when Mr Amoomo had to travel to the North. Mr Amoomo also fails to inform the Court how long it took to arrange the funeral for his late grandmother. He also fails to disclose when he returned and why he did not attend to the replying affidavit forthwith upon his undisclosed return. It is unlikely that the funeral arrangements took until the 5th of May 2021. The failure to bring the application also in this subsequent period is also not addressed at all. It is thus clear that the explanation offered is deplete, incomplete and certainly is not full and frank as it had to. The application is also defective in that it does not seek condonation for the relevant periods. It was also most certainly not brought with the required promptitude, to say the least. The respondents' opposition was thus not 'pedantic' as was submitted repeatedly.

[4] In such circumstances, and where the delay is egregious, as it obviously is in this instance, Mr Amoomo's protestations pertaining to the applicant's alleged good prospects of success do not require consideration.¹

[5] The application thus admits to only one outcome, it is to be dismissed with costs and the case is postponed to 3 November 2021 at 08h30.

Judge's signature:	Note to the parties:
GEIER Judge	Not applicable.
Counsel:	
Applicant	Respondent
K Amoomo <i>of</i> Kadhila Amoomo Legal Practitioners	D Khama <i>Instructed by</i> Office of the Government Attorney

¹ See : *South African Poultry Association and Others v Minister of Trade and Industry and Others* 2018 (1) NR 1 (SC) at [56].