

“ANNEXURE 11”  
Practice Directive 61

**IN THE HIGH COURT OF NAMIBIA**

<b>Case Title:</b> ALBERTO PEDRO GOMES vs FIRST NATIONAL BANK OF NAMIBIA LIMITED & OTHER	<b>Case No:</b> HC-MD-CIV-MOT-GEN-2021/00070
	<b>Division of Court:</b> HIGH COURT (MAIN DIVISION)
<b>Heard before:</b> HONOURABLE MR JUSTICE GEIER	<b>Date reserved:</b> 18 October 2021 (on the papers)
	<b>Delivered on:</b> 17 November 2021
<b>Neutral citation:</b> <i>Gomes v First National Bank of Namibia</i> (HC-MD-CIV-MOT-GEN-2021/00070) [2021] NAHCMD 527 (17 November 2021)	
<b>IT IS ORDERED THAT:</b>  1. The application dated 2 July 2021 is hereby dismissed with costs.  2. The matter is postponed to 7 December 2021 at 10h00 for a status hearing before Tommasi J.	
<b>Following below are the reasons for the above order:</b>	
[1] The application before court prays for condonation in regard to the out- of- time filing of a replying affidavit in a rescission application.  [2] The replying papers had to be filed by 26 April 2021.  [3] The condonation application in this regard was delivered on 2 July 2021.  [4] The main reason advanced in this regard is that the applicant directed a request to the first respondent, on 29 April 2021, for the release of certain bank statements, deemed necessary for the formulation of a reply.	

[5] Although reminders in regard to this request were sent the bank statements were only made available on 9 June 2021.

[6] As mentioned above it still took about a month before the application for condonation was brought.

[7] It was against this background contended by the applicant's legal practitioner that all this was to be attributed to – what she termed a 'lack of proper coordination, which was not wilful and did not occur through a dereliction of her duties as legal practitioner' but which occurred as a result of a lack of administrative oversight', which omission she regretted and in respect of which she undertook to be more diligent in future.

[8] Mr July, the Head Group Legal adviser of the first respondent, in opposition, firstly took the 'Rule 32(9) and (10)' point and secondly that no good cause was shown in that there was no detailed explanation for the delay, that the reasons advanced in regard to the outstanding bank statements was insufficient and that the applicant could have requested an extension of time in terms of the rules once it was realised that the reply could not be filed in time. It was also contended that the admitted lack of oversight by the applicant's legal practitioner for a period of more than two months was flagrant and that the condonation application thus had no prospects of success.

[9] It needs to be mentioned that both legal practitioners, acting for the parties, filed heads of argument in support of their clients' cases. Both sets of heads were of extreme poor quality and thus were not of any assistance to the court. I will not clutter this judgment with the details of these shortcomings. The less said, the better.

[10] Be that as it may. It appears immediately in regard to the *in limine* objection relating to the non-compliance with Rules 32(9) and (10) that there was certainly an attempt at the required Rule 32(9) engagement, in respect of which it remained arguable whether or not it was a meaningful or not, but in respect which it is uncontroverted that Rule 32(10) was not complied with. This failure, on its own, sounds the death knell for the applicant's quest to have replying papers allowed.<sup>1</sup>

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<sup>1</sup> See for instance the recent judgment: *Studio Eighty Eight Clothing (Pty) Ltd v Bezuidenhoudt & 2 Others* (HC-MD-LAB-MOT-REV-2020/00207) [2021] NALCMD 44 (29 September 2021) at [8] to [22].

[11] In any event it also clear that also most of the other criticisms levelled in regard to the applicants case have merit. The application was not full and detailed as required. I take into account that this is sometimes impossible, particularly where it is caused by oversight, discovered after the fact. In this case it would appear that it was only realised for the first time after the replying papers were due that the bank statement were required. Why the case was not diarised by the applicant’s legal practitioner to avoid this escapes comprehension and is also not explained. Proper diarisation is the ‘tried and tested’ method through which legal practitioners have always avoided getting into the situation, in which the applicants’ legal practitioner found herself. Her late realisation did not mean that the requirements pertaining to a prompt reaction thereto, ie. those in regard to the delivery of a prompt condonation application following the discovery, fell away. Also this requirement thus was not met. It is also clear that the applicant failed to address the prospects of success altogether. In such circumstances the required good cause was not shown.

[12] Finally it should be mentioned that even at this late stage the replying papers were not even tendered.

[13] It follows that the application for condonation for the failure to file replying papers has no merit and cannot succeed. The application dated 2 July 2021 is accordingly dismissed with costs.

<b>Judge’s signature:</b>	<b>Note to the parties:</b>
Geier J	Not applicable.
<b>Counsel:</b>	
<b>Applicant</b>	<b>First Respondent</b>
KL !Naruses <i>of</i> KL !Naruses & Associates	K Angula <i>of</i> AngulaCo. Inc.