

REPUBLIC OF NAMIBIA



IN THE HIGH COURT OF NAMIBIA, MAIN DIVISION, WINDHOEK
RULING

Case Title: STOFFEL JOSEPH SWARTZ vs NAMIBIA WATER CORPORATION LIMITED	Case No: HC-MD-CIV-ACT-CON-2022/02419
	Division of Court: HIGH COURT (MAIN DIVISION)
Heard before: HONOURABLE MR JUSTICE PARKER, ACTING	Date of hearing: 29 SEPTEMBER 2022
	Delivered on: 12 OCTOBER 2022
Neutral citation: <i>Swartz v Namibia Water Corporation Limited</i> (HC-MD-CIV-ACT-CON-2022/02419) [2022] NAHCMD 547 (12 OCTOBER 2022)	
IT IS ORDERED THAT: 1. The application is refused with costs under rule 32(11) of the rules, limited to reasonable disbursements. 2. The condonation application is accordingly dismissed and is removed from the roll.	
Reasons for the Order:	
<p>[1] The order that commanded defendant to file its notice of exception on or before 12 August 2022 was issued on 26 July 2022. That gave defendant 12 court days and 17 calendar days to act. Those days were on any pan of scales sufficient for any legal practitioner minded acting with care and promptitude to act in accordance with the order.</p>	

The defendant is not an entity at some far-flung locus outside the seat of the court, making it time consuming to take instructions from. And as of 26 July 2022 the defendant had made up its mind to bring the notice.

[2] The ineptness of defendant's legal practitioners and their sloven remissness cannot be good reasons that can persuade the court to exercise its discretion in favour of the defendant by granting the condonation application. The legal practitioners' explanation that the late filing of the notice of exception is a bona fide mistake is respectfully rejected as not being good and valid. A 'mistake' is an act that is misguided or wrong.¹

[3] If you ask me, there has of late been far too many condonation applications doing their round in the court; condonation applications brought to condone the incessant failure to obey court orders by parties. This shameful vogue has the effect of setting at naught court orders and that does not conduce to due administration of justice and the promotion of rule of law.

[4] Ms Brinkman attacked respondent's so-called opposing affidavit as being defective. That may be so. But that is of no moment. The fact that the opposing papers of respondent is not an answering affidavit properly so called, does not mean that applicant can obtain judgment as if by default. The applicant must on its papers persuade the court to grant the relief sought.²

[5] The applicant says the application enjoys good prospects of success, and so, the court ought to grant it. That is not a good enough reason as far as the court is concerned to grant the relief sought. To accept such contention will set a dangerous and unjustifiable precedent, remembering what I said previously about the unacceptable vogue that has bedevilled the court in its duty to attain due administration of justice and to protect and promote rule of law.

[6] Based on these reasons I decline to exercise my discretion in favour of granting the indulgence craved by applicant. The application fails.

¹ Concise *Oxford English Dictionary* 12 ed.

² *Christian v Metropolitan Life Namibia Retirement Annuity Fund and Others* 2008 (2) NR 753 (SC) para 15.

Judge's signature	Note to the parties:
Parker Acting Judge	Not applicable.
Counsel:	
Plaintiff/Respondent	Defendant/Applicant
In Person	C Brinkman <i>of</i> ENSafrica Namibia, Windhoek