



[1] This is a condonation application purportedly brought on behalf of the defendant.

[2] By court order dated 27 April 2022, the defendant was directed to file his plea and/or counterclaim on or before 11 May 2022. The defendant filed his plea and counterclaim on 13 May 2022. The defendant then filed a condonation application in respect of that default.

[3] The founding affidavit accompanying the defendant's condonation application is deposed to by Mr Joseph Andreas, the defendant's legal practitioner of record. In the affidavit Mr Andreas simply avers that he is the defendant's legal practitioner of record and proceeds to state that the facts set out in the affidavit are within his personal knowledge and are true and correct.

#### Point in *limine*

[4] In opposing the condonation application, the plaintiff raises a point in *limine* to the effect that Mr Andreas lacks authority to bring the application for condonation. The court is therefore called upon to decide the issue of authority before proceeding to the merits of the condonation application.

[5] The plaintiff contends that the founding affidavit does not state whether or not Mr Andreas is duly authorized to bring the condonation application. There is no confirmatory affidavit deposed to by the defendant which confirms that Mr Andreas is indeed so authorized. The plaintiff therefore contends that the condonation application be dismissed with costs on that ground alone.

[6] In reply, the deponent to the defendant's affidavit denies that he lacks authority to bring the condonation application. The deponent avers that he is duly authorized to bring the application on behalf of the defendant, as the defendant's legal practitioner of record. He further states that the non-compliance with the court order of 27 April 2022 was occasioned due to an error on his part, as set out in the application.

#### Analysis

[7] It is trite that in motion proceedings, an applicant who acts on behalf of someone else, bears the *onus* of proving that he is authorized to institute proceedings. The applicant needs only

allege that he is duly authorized to bring the proceedings. If his authority is disputed, he may attach a confirmation of such authority, in reply.<sup>1</sup>

[8] In the present matter, Mr Andreas does not allege in the founding affidavit, that he is duly authorized to bring the condonation application. Being the legal practitioner for the defendant of record, alone, does not mean one is entitled to bring any application on behalf of that defendant. After his authority was challenged, Mr Andreas ought at least to have produced a confirmatory affidavit by the defendant confirming that the defendant had indeed given him instructions to act on his behalf in bringing the condonation application.

[9] I am of the opinion that Mr Andreas has failed to discharge the onus on him to show that he has the authority of the defendant to bring the condonation application. Therefore, there is no properly authorized application for condonation before court. The application for condonation therefore stands to be struck from the roll. Because of the conclusion I have reached on this aspect, it is no longer necessary to deal with the merits of the application.

#### Costs

[10] As regards the issue of costs, I am of the view that the general rule that costs follow the event must find application in this matter. During argument, the plaintiff was asked by the court as to who should pay its costs in the event that the court found that Mr Andreas has no authority to bring the condonation application. The plaintiff's legal practitioner submitted that in such event Mr Andreas should pay the costs. Mr Andreas did not make submissions to the contrary on that aspect. I am of the view that in the circumstances of this matter, a costs order against the deponent to the affidavit supporting the condonation application is justified, as he is the person who brought the application.

[11] In the result, I make the following order:

1. The application for condonation of the late filing of defendant's plea and counterclaim is struck for the roll for want of authority to bring the application.
2. The deponent to the affidavit supporting the condonation, Mr Joseph Andreas, is directed to pay the plaintiff's costs occasioned by the condonation application.
3. The matter is postponed to 2 November 2022 at 15:15 for status hearing on the

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<sup>1</sup> *Namibia Protection Services (Pty) Ltd v Hainghumbi* (HC-MD-LAB-APP-AAA-2021/00046) 2022 NALCMD 15 (23 March 2022) para 24.

further conduct of the matter.	
4. The parties shall file a joint status report on or before 26 October 2022.	
<b>Judge's signature</b>	<b>Note to the parties:</b>
B Usiku Judge	Not applicable
<b>Counsel:</b>	
<b>Plaintiff:</b>	<b>Defendant:</b>
M Mombeyarara MM Legal Practitioners, Windhoek	H Hamunyela Andreas-Hamunyela Legal Practitioners, Windhoek