

REPUBLIC OF NAMIBIA



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

<b>Case Title:</b> <i>JOB JANUARIE AND OTHERS vs PAULUS BENJAMIN JANUARIE AND OTHERS</i>	<b>Case No:</b> HC-MD-CIV-ACT-OTH-2021/03840
	<b>Division of Court:</b> HIGH COURT (MAIN DIVISION)
<b>Heard before:</b> PARKER AJ	<b>Date of hearing:</b> 6 OCTOBER 2022
	<b>Delivered on:</b> 19 OCTOBER 2022
<b>Neutral citation:</b> <i>Januarie v Januarie</i> (HC-MD-CIV-ACT-OTH-2021/03840) [2022] NAHCMD 562 (19 October 2022)	
<b>IT IS ORDERED THAT:</b>  1. The application for security for costs is struck from the roll with costs as prescribed by rule 32 (11) of the rules of court.  2. The legal practitioners of the parties are called to attend a status hearing on 2 November 2022 at 08h30, for the court to determine the further conduct of the action.  3. The parties must file a joint status report on or before 28 October 2022.	
<b>Reasons for the Order:</b>	
[1] The commencement of the trial of the instant cause has been balked down in an interlocutory proceeding. The present interlocutory proceeding is about an application by	

the defendants for the posting of security for costs. The defendants are the applicants and are represented by Ms Mouton. The plaintiffs are the respondents and are represented by Mr Noelle.

[2] In their answering papers, the plaintiffs have raised in Part A thereof what they characterize as 'points in limine'. At the hearing, arguments centered on applicant's non-compliance with rule 32 (9) and rule 59 (1) of the rules of court. As an adjunct to the rule 59 (1) preliminary objection, respondents aver that there has been unreasonable delay in bringing the application.

[3] In the instant proceeding, I shall determine the application for security for costs ('the application') with regard to the preliminary objection respecting rule 32 (9) only. The reason is that the upholding of the rule 32 (9) objection will be dispositive of the application.

[4] The first crucial point to make is that the applicant, who wishes to bring an interlocutory proceeding, bears the burden of ensuring the implementation of rule 32 (9) and (10). The *ipsissima verba* of rule 32 (9) accounts for this affirmation. Ms Mouton argued that there has been a compliance with rule 32 (9) requirements. Mr Noelle argued contrariwise that there has been no compliance. What grounds do Ms Mouton rely on for her contention. Only this. Counsel relies on a letter she wrote to Mr Noelle, dated 26 June 2022. The letter has this heading:

'NOTICE FOR SECURITY FOR COST(S) IN TERMS OF RULE 59(1) JOB JANUARIE AND FOUR OTHERS // PAUL AND DEIDRE JANUARIE RULE 32(9) ENGAGEMENTS.'

[5] The letter reads, in material part:

1. We address this missive to you in fulfilment of the requirements of both the above stated court rules.

2. We refer to our earlier Rule 32 (9) notice dated 7 June 2022, which we confirm and to which you replied in the negative.

3. Forthwith, we herewith demand security for the legal cost(s) incurred so far and going forward for and on behalf of our clients, 1<sup>st</sup> and 2<sup>nd</sup> Defendant from 1<sup>st</sup>, 2<sup>nd</sup>, 4<sup>th</sup>, and 5<sup>th</sup> Plaintiffs.'

[6] That is all that Ms Mouton did 'in fulfilment of the requirements of rule 32 (9)'. That by all account is a perfunctory attempt to comply with the peremptory provisions of rule 32 (9). Indeed, Masuku J tells us that:

'[T]he mere writing of a letter may be the precursor to a meeting where the parties, duly instructed with issues or material for full discussion, and possibly resolution of some, if not all the issues on the table. The letter initiating a meeting cannot be an end in and of itself'.<sup>1</sup>

[7] On any pan of legal scales, I should hold that the letters written by Ms Mouton 'cannot pass as a genuine attempt to settle the matter amicably'.<sup>2</sup> Consequently, I cannot say there has been a compliance with rule 32 (9) of the rules of court without offending *Bank Windhoek v Benlin*.<sup>3</sup>

[8] Having found that there has been non-compliance with the peremptory provisions of rule 32 (9),<sup>4</sup> it is otiose to consider any other issues on account of the prescriptions in rule 32 (9) and (10) of the rules. Accordingly, I find that there is no application for security for costs properly before the court for adjudication. As to costs, I do not see any good reason why I should depart from the amount of costs prescribed by rule 32 (11) of the rules.

[9] In the result, it is ordered that:

1. The application for security for costs is struck from the roll with costs as prescribed by rule 32 (11) of the rules of court.
2. The legal practitioners of the parties are called to attend a status hearing on 2 November 2022 at 08h30, for the court to determine the further conduct of the action.
3. The parties must file a joint status report on or before 28 October 2022.

**Judge's signature**

**Note to the parties:**

<sup>1</sup> *Bank Windhoek v Benlin* 2017 (2) NR 403 para 14.

<sup>2</sup> *Ibid* para 12.

<sup>3</sup> See footnote 1.

<sup>4</sup> *Mukata v Appolus* 2015 (3) NR 695 (HC).

Parker Acting Judge	Not applicable.
<b>Counsel:</b>	
<b>Plaintiffs/respondents</b>	<b>Defendants/applicants</b>
M Noelle of Engling, Stritter & Partners, Windhoek	L Mouton of Van Wyk Legal Practitioners, Windhoek