

REPUBLIC OF NAMIBIA



“ANNEXURE 11”

IN THE HIGH COURT OF NAMIBIA

Case Title: JESAYA M IIPINGE // ILEKA TAAPOPI AND THREE OTHERS	Case No: I 1928/2015
	Division of Court: High Court, Main Division
Heard before: Honourable Acting Judge Miller	Date of hearing: 8 December 2021
	Delivered on: 23 February 2022
Neutral citation: <i>Ipinge v Taapopi</i> (I 1928/2015) [2022] NAHCMD 73 (23 February 2022).	
Result on merits: The application is dismissed with costs.	
<p>Having heard Ms Ihalwa, counsel for the Plaintiff and Mr Gaeb, counsel for the first and third Defendants and having read the pleadings for I 1928/2015 and other documents filed of record:</p> <p>IT IS ORDERED THAT:</p> <ol style="list-style-type: none">1. The application is dismissed with costs.2. The matter is postponed to Wednesday, 2 March 2022 at 15h15 on the case management roll of the Honourable Judge B. Usiku.	

Reasons for orders:

[1] In this matter the applicant seeks the following relief.

[1.1] An order condoning the failure to file this application on or before the 19th of February 2021, as ordered by the Honorable Court on 15 February 2021.

[1.2] An order allowing and directing that the evidence of witness Sakeus Joel Kashuna be taken before a commissioner of the Court, at the Oshakati Local Division of the High Court of Namibia, on a date and time as determined by the managing Judge.

[1.3] An order that the evidence to be taken in terms of paragraph 1 shall be taken before the trial and shall be adduced on oral examination in the presence of all parties and their legal practitioners, if any, and that the witness may be subjected to cross-examination and re-examination.

[1.4] An order that the Plaintiff is permitted to use the deposition of the evidence taken in accordance with paragraph 1 and 2 during the trial, on such terms, if any, as the managing judge considers suitable or appropriate.

[1.5] An order of costs against the parties opposing this application.

[1.6] Further and/or alternative relief.

[2] The remedies that the applicant seeks are discretionary remedies. Paramount in deciding the issue is whether from the facts placed before me it is necessary to or convenient to grant the relief in order to obtain justice.

[3] There is also the concomitant factor of delay.

[4] A first and important fact is to determine

[4.1] Was there a delay?

[4.2] I there an explanation for the delay?

[4.3] Is the explanation that is advanced reasonable?

[5] From the papers filed in the matter it appears that the applicant and the legal practitioner then representing him concluded as early as 2018 that an application to take the evidence of Mr. Kashona on commission may well be necessary. I pause the point out that this application is dated 24 February 2021.

[6] The applicant acknowledges the fact there has been some considerable delay. He places the blame entirely on the inactivity of his erstwhile legal practitioner and the latter's failure to file a timely application.

[7] I will not readily visit the culpability of a legal practitioner upon his client but there are limits beyond which an applicant can no longer hide behind the conduct or failure of his legal representative. As to what stage the threshold is crossed will depend upon the facts and circumstances of each case.

[8] On the facts of this case I conclude that the admitted delay in bringing the application is and remains unreasonable. There are other more convenient remedies available for the applicant to ensure that justice is done.

[9] The following order is made:

[9.1] The application is dismissed with costs.

[9.2] The matter is postponed to Wednesday, 2 March 2022 at 15h15 on the case management roll of the Honourable Judge B. Usiku.

Judge's signature:	Note to the parties:
Miller AJ	
Counsel:	
Plaintiff(s)	Defendant (s)
Ms Ihalwa Ellis Shilengudwa Inc.	Mr Gaeb Sisa Namandje & Co