

REPUBLIC OF NAMIBIA



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

Case Title: BANK WINDHOEK LIMITED vs THOMAS CHRISTIAN KARIJAPUA IHUHUA & 2 OTHERS	Case No: HC-MD-CIV-ACT-CON-2021/03687
	Division of Court: HIGH COURT(MAIN DIVISION)
Heard before: HONOURABLE MR JUSTICE PARKER AJ	Date of hearing: 25 January 2023
	Date of order: 25 January 2023
	Released on: 30 January 2023
Neutral citation: <i>Bank Windhoek Limited v Ihuhua</i> (HC-MD-CIV-ACT-CON-2021/03687) [2023] NAHCMD 17 (25 January 2023)	
Result on merits: Default Judgment Application succeeded.	
IT IS HEREBY ORDERED THAT:	
1. Payment in the amount of N\$1,622,261.12.	
2. Interest on the aforesaid amount at Prime Rate (currently 7.50 percent) Plus 1.50 = 9.00 percent per annum as from 19 September 2022 to date of payment, calculated on a daily balance and compounded monthly.	
3. Costs of suit on an attorney and own client scale.	

Reasons for orders:

[1] The court grants judgment in favour of the plaintiff as claimed against the second defendant and the third defendant, jointly and severally, the one to pay, the other to be absolved in terms appearing in the order.

[2] In this matter, consent default judgment was as far back as 24 August 2022 granted against the first defendant. On 2 November 2022, the court granted the following order in the presence of the parties' counsel:

'1 The parties should comply with rule 32(9) and (10) in respect of the condonation application by 18 November 2022.

2. The defendant should file the condonation application by 25 November 2022.

3. Parties should exchange Affidavits and file heads of arguments in respect of the condonation application in terms of the rules of this court.

4. The case is postponed to 25 January 2023 at 10h00 for hearing the condonation application.'

[3] The record is replete with the defendants' flagrant disregard of the orders of the court. The last is the said order of 2 November 2022. The conduct of the second and third defendants is not only wilful, for no reason has been forthcoming for their conduct, but also it borders on the contemptuous. The court should not come to the aid of such litigants; otherwise orders of the court will become otiose, serving no purpose. And that does conduce to due administration of justice.

[4] Besides, the two defendants, who wished to bring the condonation application, bear the burden of ensuring the implementation of rule 32(9) and (10) of the rules of court. In the instant matter, there has not been compliance with the peremptory provisions of rule 32(9) and (10). That being the case, I conclude that there is no application for condonation properly before the court.¹ In any case, the condonation application was not launched without delay.² And that should count heavily against the

¹ See *Januarie v Januarie* [2022] NAHCMD 562 (19 October 2022); and the cases there cited.

² See *Petrus v Roman Catholic Archdiocese* 2011 (2) NR 637 (SC) para 9.

defendants.

[5] On the papers, I find that there is no opposition to the application for judgment by default; but, more important, I find that the plaintiff has made out a case for the relief sought. Therefore, the plaintiff is entitled to judgment.

[6] In the result, it is ordered in the following terms:

1. Payment in the amount of N\$1,622,261.12.
2. Interest on the aforesaid amount at Prime Rate (currently 7.50 percent) Plus 1.50 = 9.00 percent per annum as from 19 September 2022 to date of payment, calculated on a daily balance and compounded monthly.
3. Costs of suit on an attorney and own client scale.

Judge's signature	Note to the parties:
	Not applicable.
Counsel:	
Applicant	Respondent
H Garbers-Kirsten Instructed by Van der Merwe-Greeff Andima Inc.	A. Delport of Delport Legal Practitioners