

REPUBLIC OF NAMIBIA

HIGH COURT OF NAMIBIA



MAIN DIVISION, WINDHOEK

RULING

PRACTICE DIRECTIVE 61

Case Title: JASON SILVANUS ERICH GURIRAB // STRYDO CONSTRUCTION CLOSE CORPORATION & 5 OTHERS	Case No: HC-MD-CIV-MOT-GEN-2022/00534
	Division of Court: HIGH COURT (MAIN DIVISION)
Heard before: PARKER, AJ	Heard on: 9 MAY 2023
	Delivered on: 7 JUNE 2023
Neutral citation: <i>Gurirab v Strydo Construction Close Corporations</i> (HC-MD-CIV-MOT-GEN-2022/00534) [2023] NAHCMD 301 (7 June 2023)	
The order: <ol style="list-style-type: none">1. The application is dismissed with costs.2. The matter is finalised and removed from the roll.	
Reasons for the above order:	
<p>[1] The applicant challenges by judicial review the validity and lawfulness of the writ of execution issued on 5 September 2019 in favour of the first respondent in an action under Case No. HC-MD-CIV-ACT-CON-2019/00979. The applicant has prayed for an order to set aside the writ of execution and an order to interdict and restrain the respondents from taking 'any steps, actions and or proceedings aimed at the execution and enforcement of the writ of execution' under the aforementioned action.</p> <p>[2] The first respondent has moved to reject the application, and in its answering affidavit,</p>	

has raised a point *in limine* that there has been an unreasonable delay in the institution of the application. It is to the determination of that preliminary point that I direct the present enquiry.

[3] Mr Kasper represents the applicant and Mr Olivier the first respondent. The law is now entrenched that when such a point is raised, its determination involves two enquiries:

[21] This court has held that the question of whether a litigant has delayed unreasonably in instituting proceedings involves two enquiries: the first is whether the time that it took the litigant to institute proceedings was unreasonable. If the court concludes that the delay was unreasonable, then the question arises whether the court should, in an exercise of its discretion, grant condonation for the unreasonable delay. In considering whether there has been unreasonable delay, the High Court has held that each case must be judged on its own facts and circumstances so what may be reasonable in one case may not be so in another. Moreover, that enquiry as to whether a delay is unreasonable or not does not involve the exercise of the court's discretion.¹

[4] The conduct complained of is the issuance of the writ of execution, and it occurred on 5 September 2019, as appears clearly and unambiguously in para 1 of the notice of motion. According to the applicant he was aggrieved when he had sight of the 'Original' thereof, dated 10 September 2019, and yet it took him three years and 54 days to institute the present review application. On the facts and in the circumstances of the case, I find that the time that it took the applicant to institute proceedings was unreasonable. The delay is, therefore, unreasonable. I proceed to undertake the second enquiry, that is, whether in my discretion, I ought to condone the unreasonable delay.

[5] In deciding whether to condone the unreasonable delay, I should consider any explanation given for the unreasonable delay. From his replying affidavit, I find that the applicant has not put forth sufficient and satisfactory explanation for the unreasonable delay. The issuance of summons against the applicant under Case No. HC-MD-CIV-ACT-OTH-2022/00218, as mentioned in the applicant's replying affidavit, did not take away the applicant's complaint against the writ of execution; and the applicant does not say it did. Consequently, I see no good reason why the applicant would rely on the summons to explain why it took him three years and 54 days to institute the present review application against a writ of execution, whose original copy came to his knowledge on 10 September 2019 and with which he was aggrieved.

¹ *Keya v Chief of the Defence Force and Others* 2013 (3) NR 770 (SC).

[6] Given the absence of sufficient and satisfactory explanation for the unreasonable delay in instituting the instant application, in the exercise of my discretion I decline to condone the unreasonable delay in instituting the instant proceedings. I conclude that there is no application properly before the court for the court to consider. Consequently, I uphold the first respondent's point *in limine*.

[7] In the result, I order as follows:

1. The application is dismissed with costs.
2. The matter is finalised and removed from the roll.

Judge's signature:	Note to the parties:
	Not applicable.
Counsel:	
Applicant/Defendant	1st Respondent/Plaintiff
G L KASPER of Murorua Kurtz Kasper Inc., Windhoek	J OLIVIER of Jan Olivier & Co. c/o Ellis Shilengudwa Inc., Windhoek