

REPUBLIC OF NAMIBIA

HIGH COURT OF NAMIBIA



MAIN DIVISION, WINDHOEK

RULING

PRACTICE DIRECTION 61

<b>Case Title:</b> JUANITA SONJA KLASSEN // SOUTH AFRICAN AIRWAYS SOC LTD & OTHERS	<b>Case No:</b> HC-MD-CIV-MOT-GEN-2022/00033
	<b>Division of Court:</b> HIGH COURT (MAIN DIVISION)
<b>Heard before:</b> PARKER, AJ	<b>Date Determined on the papers:</b> 23 June 2023
	<b>Delivered on:</b> 5 July 2023
<b>Neutral citation:</b> <i>Klassen v South African Airways SOC Ltd</i> (HC-MD-CIV-MOT-GEN-2022/00033) [2023] NAHCMD 375 (5 July 2023)	
<b>Order:</b>	
<ol style="list-style-type: none"><li>1. The condonation application is dismissed.</li><li>2. The application to rescind the order of the court, dated 20 March 2020, is struck from the roll.</li><li>3. There is no order as to costs.</li><li>4. The matter is finalised and removed from the roll.</li></ol>	
<b>Reasons for the above order:</b>	

[1] The applicant has applied to the court to condone applicant's failure to comply with rule 16(1) of the rules of court. In that regard, the applicant seeks the court's indulgence to extend the time limit prescribed by rule 16(1) of the rules of court to enable her to apply to the court to rescind the order of the court dated 20 March 2020 under case no. HC-MD-CIV-ACT-DEL-2016/02479 in so far as it relates to the applicant. The rescission application in terms of rule 61 of the rules was instituted on 1 February 2022.

[2] Mr Avila, counsel for the applicant, asked the court to determine the application on the papers filed of record without the need for an oral submission. The instant application is therefore determined with regard to the papers filed of record and counsel's written submission.

[3] It is important to note that the applicant had legal representation at all relevant times. The applicant avers that 'Unbeknown to me, on or about 20 March 2020 default judgment was granted against me'. The time limit within which the applicant ought to have applied to the court to set aside the default judgment was 20 days after 20 March 2020. The legal practitioners had knowledge of the judgment as on that date. The applicant does not give any explanation why her legal practitioners of record did not act with speed and promptitude in order to beat the 20-day time limit after 20 March 2020.

[4] It is well settled that an application for condonation is required to meet the two requisites of good cause before the applicant can succeed in such application. These entail firstly establishing a reasonable and an acceptable explanation for the delay and secondly satisfying the court that there are reasonable prospects of success on the main application.<sup>1</sup> And it should be remembered, the two requisites must be satisfied together. This principle was enunciated by the Supreme Court in *Balzer v Vries*.<sup>2</sup> That case concerned an application to condone the late filing of a notice of appeal. I see no good reason why the principle should not apply with equal force to applications to condone the late filing of rescission applications to rescind judgments and orders or set aside a default judgment in terms of rule 61 of the rules of court.

[5] In *Arangies t/a Auto Tech v Quick Build*,<sup>3</sup> the Supreme Court proposed factors which ought to be considered in a condonation application to determine the first requisite of good

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<sup>1</sup> See, e.g., *Balzer v Vries* 2015 (2) NR 547 (SC).

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

<sup>3</sup> *Arangies t/a Auto Tech v Quick Build* 2014 (1) NR 187 (SC) para 5.

cause, that is, establishing a reasonable and acceptable explanation for the delay. There, the Supreme Court reiterated its holding that the court will not consider prospects of success (ie the second requisite) in determining the application because the non-compliance with the rules has been glaring, flagrant and inexplicable.

[6] In the instant matter, I have poured over the explanation given by the applicant against the factors proposed by the Supreme Court in *Arangies t/a Auto Tech*.<sup>4</sup> Having done that, I find that the applicant has failed to establish a reasonable and an acceptable explanation for the delay. Above all, the inordinately long period of delay in bringing the rescission application does not conduce to due administration of justice. The reasonable conclusion I draw is that the applicant's non-compliance with rule 61(1) of the rules of court is glaring, flagrant and inexplicable. Consequently, I decline to consider any prospects of success on the main application.<sup>5</sup>

[7] Based on these reasons, the application fails, and is rejected. In the result, I order as follows:

1. The condonation application is dismissed.
2. The application to rescind the order of the court, dated 20 March 2020, is struck from the roll.
3. There is no order as to costs.
4. The matter is finalised and removed from the roll.

Judge's signature:	Note to the parties:
	Not applicable.
<b>Counsel:</b>	
Applicant	Respondents
R Avila of	

<sup>4</sup> Loc cit.

<sup>5</sup> Loc cit.

Metcalf Beukes Attorneys, Windhoek	
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