

REPUBLIC OF NAMIBIA



HIGH COURT OF NAMIBIA MAIN DIVISION, WINDHOEK

Practice Directive 61

RULING

<b>Case Title:</b> Albert Jass  and  The Minister of Home Affairs, Immigration, Safety and Security  Commissioner-General of the Namibian Correctional Services  Chairperson of the Disciplinary Board Constituted to Inquire into the alleged misconduct by Albert Jass  The Head: Complaints and Discipline Office at Luderitz Correctional Facility	Applicant    1 <sup>st</sup> Respondent  2 <sup>nd</sup> Respondent  3 <sup>rd</sup> Respondent  4 <sup>th</sup> Respondent	<b>Case No:</b> HC-MD-CIV-MOT-REV-2022/00005  <b>Division of Court:</b> High Court, Main Division
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<p>The Head: Division Staff Discipline      5<sup>th</sup> Respondent</p> <p>The Head: Directorate Legal Services and Discipline      6<sup>th</sup> Respondent</p> <p>The Government of Namibia      7<sup>th</sup> Respondent</p>	
<p><b>Coram:</b> HONOURABLE JUSTICE COLEMAN</p>	<p><b>Heard:</b> 9 December 2022</p> <p><b>Delivered:</b> 9 February 2023</p>
<p><b>Neutral citation:</b> <i>Jass v The Minister of Home Affairs, Immigration, Safety and Security</i> (HC-MD-CIV-MOT-REV-2022/00005) [2023] NAHCMD 41 (9 February 2023)</p>	
<p><b>Order:</b></p> <ol style="list-style-type: none"> <li>1. Respondents' failure to file their answering affidavits in terms of the court order dated 12 May 2022 is condoned and the bar is lifted.</li> <li>2. Respondents are directed to file their respective answering affidavits by <b>20 March 2023</b>.</li> <li>3. Applicant has to file his replying affidavit by <b>12 April 2023</b>.</li> <li>4. The respondents are ordered, jointly and severally, to pay applicant's costs of this application, to include one instructing and one instructed counsel, subject to rule 32(11) of the rules of this court.</li> <li>5. The matter is postponed to <b>20 April 2022 at 15.30</b> for a status hearing.</li> <li>6. The parties shall file a joint status report on or before <b>17 April 2023</b>.</li> </ol>	

**Ruling:**

COLEMAN J:

Introduction

[1] This is an interlocutory application for the condonation of the failure to file answering affidavits in terms of a court order dated 12 May 2022 and the lifting of the bar consequent upon the failure to file answering affidavits. The main application is a review application which was initiated on 14 January 2022. The respondents in that application are the applicants for condonation herein. The parties are referred to as in the main application.

Pertinent facts

[2] On 12 May 2022 I ordered the respondents to file their answering affidavits by 28 June 2022. They failed to do so. This is the reason for this application. This application for condonation was filed on 27 July 2022.

[3] Respondents' (as applicants for condonation) explanation for neglecting to file their answering affidavits includes the fact that applicant filed a substantial supplementary affidavit in response to the review record, which added to what has to be addressed in the answering affidavits, as well as time constraints and clashing schedules of a deponent to an answering affidavit. In addition, the respondents' legal practitioner was inundated with work and spent sleepless nights to meet competing deadlines. On top of it he was taken ill on 12 July 2022 – after the due date.

[4] Applicant contends that this matter is replete with historical non-compliances. The review

record was not filed within time. Applicant's rule 76(6) notice was complied with 20 days late. A court order to file a discovery affidavit was complied with 7 days late. An undertaking to court to file respondents' supplementary record by 13 May 2022 was complied with two days late. No replying affidavit was filed in this application. No heads were filed on behalf of the respondents for the hearing of this application.

[5] The deponent to the affidavit in the condonation application is the Deputy Commissioner of Legal Services in the offices of the Commissioner-General of the Namibian Correctional Services (second respondent in the main application). He alleges, amongst others, that respondents have reasonable prospects of success in the review application. Applicant contends that this is inadmissible hearsay, while respondents' legal practitioner contends it is the minimum allegation required for the purposes of condonation.

### Conclusion

[6] This condonation application concerns answering affidavits in a review application where applicant challenges his dismissal from the Namibian Correctional Services. There are at least five respondents that could file answering affidavits.

[7] The level of remissness on the part of the legal practitioner for the respondents from the outset is concerning. Time limits and deadlines in the context of litigation play a crucial role and are not mere suggestions. They have to be adhered to meticulously. The fact that a legal practitioner is inundated with work is not an excuse. The Government Attorney's office cannot expect special treatment. When a court gives a direction for filing on a particular date it is the

prerogative of the legal practitioner involved who may be inundated with work, or else, to indicate there and then if more time will be needed instead of later attempting to obtain extensions.

[8] Ultimately granting condonation is within my discretion. I considered all the facts and the submissions by the representatives of the parties. In this matter there was in my view a confluence of circumstance which led to the failure of the filing of answering affidavits. The explanation for the failure here is borderline acceptable, but the impact of refusal of condonation on the respondents and the administration of justice in my view pivots towards granting condonation. The Respondents will be given a final opportunity to file their answering affidavits herein. It has to be understood that adherence to deadlines will in future be enforced strictly in this matter.

[9] As far as costs is concerned, the applicant was justified to oppose this application. As a demonstration of the court's disapproval of the remissness in this matter the respondents will have to pay applicant's costs.

[10] Accordingly, I make the following order:

1. Respondents' failure to file their answering affidavits in terms of the court order dated 12 May 2022 is condoned and the bar is lifted.
2. Respondents are directed to file their respective answering affidavits by **20 March 2023**.
3. Applicant has to file his replying affidavit by **12 April 2023**.
4. The respondents are ordered, jointly and severally, to pay applicant's costs of this application, to include one instructing and one instructed counsel, subject to rule 32(11) of

the rules of this court.

5. The matter is postponed to **20 April 2022 at 15.30** for a status hearing.
6. The parties shall file a joint status report on or before **17 April 2023**.

<b>Judge's signature</b>	<b>Note to the parties:</b>
	Not applicable.
<b>Counsel:</b>	
<b>Applicant</b>	<b>Respondents</b>
<p>Mr Quickfall Instructed by ENSAFRICA Namibia</p>	<p>Mr Amukoto Government Attorney</p>