

REPUBLIC OF NAMIBIA

HIGH COURT OF NAMIBIA
RULING
(PRACTICE DIRECTION 61)



MAIN DIVISION, WINDHOEK

Case Title: EVERAL CYNTHIA SITLER and PUPKEWITZ MOTORS PLAINTIFF DEFENDANT	Case No: HC-MD-CIV-ACT-DEL-2022/02711
	Division of Court: HIGH COURT (MAIN DIVISION)
Heard before: HONOURABLE MR JUSTICE PARKER, ACTING	Date of hearing: 3 AUGUST 2023
	Delivered on: 17 AUGUST 2023

Neutral citation: *Sitler v Pupkewitz Motors* (HC-MD-CIV-ACT-DEL-2022/02711) [2023]
NAHCMD 505 (17 August 2023)

IT IS ORDERED THAT:

1. The plaintiff is granted leave to withdraw the action.
2. There is no order as to costs.
3. The matter is finalized and removed from the roll.

Following below are the reasons for the above order:

[1] In this application, Ms Ntelamo-Matswetu represents the plaintiff and Mr van Vuuren represents the defendant. The contentions in the papers filed of record resolve themselves into two neat questions that the court should answer in the determination of the application. Firstly, must a party that withdraws proceedings that he or she has instituted tender and pay costs? Secondly, whether the court is competent to order costs in proceedings in respect of which legal aid has been granted in terms of the Legal Aid Act 29 of 1990?

[2] As to the first question, the interpretation and application of rule 97(1) of the rules of court compels a positive answer. As to the second question, the answer lies in the high authority of the Supreme Court, per Shivute CJ (writing the unanimous decision of the Supreme Court), in *Mentoor v Usebiu*.¹ There, the Supreme Court in a unanimous judgment stated resolutely and unambiguously thus:

‘Section 18 of the Legal Aid Act 29 of 1990 prohibits the making of a costs order in proceedings in respect of which legal aid has been granted.’²

[3] Thus, if legal aid in terms of the Legal Aid Act has been granted in the proceedings, rule 97(1) is not applicable, and in that regard, the court is not competent to make a costs order. Since legal aid was granted in the instant proceedings, s 18 of the Legal Aid Act prohibits the making of a costs order.

[4] In the result, I decline to make a costs order.

Judge’s signature:	Note to the parties:
	Not applicable.
Counsel:	
Plaintiff	Defendant
H NTELAMO-MATSWETU Of Ntelamo-Matswetu & Associates Windhoek	A VAN VUUREN Instructed by Engling, Stritter & Partners Windhoek

¹ *Mentoor v Usebiu* (SA 24-2015) [2017] (10 April 2017) (SC).

² *Ibid* para 21.