

REPUBLIC OF NAMIBIA



HIGH COURT OF NAMIBIA MAIN DIVISION, WINDHOEK

Practice Directive 61

RULING

Case Title: Bravo Compliance (Pty) Ltd Applicant and Namib Desert Diamonds (Pty) Ltd Respondent	Case No: HC-MD-CIV-ACT-CON-2019/00396 Division of Court: High Court, Main Division
Coram: HONOURABLE JUSTICE COLEMAN	Heard: 9 December 2022 Delivered: 16 February 2023
Neutral citation: <i>Bravo Compliance (Pty) Ltd v Namib Desert Diamonds (Pty) Ltd</i> (HC-MD-CIV-ACT-CON-2019/00396) [2023] NAHCMD 58 (16 February 2023)	
Order: 1. The application is struck from the roll with costs to be capped as contemplated in rule	

32(11) of the rules of this court.

2. The parties are directed to make every effort to resolve the dispute about the increase of security for costs and if not to comply with rule 59(7) of the rules of court in order for the increase of security for costs to be determined by the Registrar.
3. The main action is postponed to **27 April 2023 at 15h30** for a status hearing to give the parties an opportunity to resolve the security for costs issue.
4. The parties shall file a joint status report on or before 20 April 2023.

Ruling:

COLEMAN J:

Introduction

[1] This is an interlocutory matter which the applicant had set down on an urgent basis. It involves a dispute about the increase of security for costs put up by applicant in the main action. Applicant applies in terms of rule 61 that the proceedings set down before the Registrar of the High Court for 6 December 2022 be set aside as irregular.

Pertinent facts

[2] Applicant (plaintiff in the main action) is a South African company and its obligation to put up security for costs is not in dispute.

[3] On 12 September 2022 respondent's legal practitioners issued a 'Notice to Furnish Security'. This notice clearly states that respondent demands an increase in security for costs. After applicant was ordered by me to do so, it filed a notice of opposition on 14 October 2022. In response respondent's legal practitioners wrote to the Registrar on 15 November 2022 requesting

a date for the determination of the amount of security to be paid by applicant. On 28 November 2022 the Registrar's office notified the parties that the matter is set down for 6 December 2022 at 11h00.

[4] After a flurry of email communications, applicant filed this application on 2 December 2022. Significantly, it filed a certificate of urgency only on 6 December 2022 at 10h38. The Registrar's office postponed the hearing set down for 11h00 on 6 December 2011 *sine die* on the morning of 6 December 2022.

[5] This urgent application was set down for 11h00 on Friday, 9 December 2022.

[6] In its notice of motion the applicant asks for a variety of relief, the first (apart from dispensing with the forms and service for urgency) being the stay of the proceedings of 6 December 2022 before the Registrar. This is followed by the setting aside of the alleged irregular proceedings and other consequential relief.

Conclusion

[7] Applicant chose to pursue this as an urgent application and Mr Tjiroze, who acts on behalf of applicant herein, signed the certificate of urgency on 6 December 2022 while the hearing set down before the Registrar for 6 December 2022 had been postponed. In my view the only reason this application could conceivably be urgent is to stay the hearing before the Registrar. None of the other relief had to be determined on an urgent basis.

[8] Furthermore, rule 73(4) dealing with urgent applications, is unequivocal in that an applicant must set out explicitly in its affidavit in support of an urgent application, the circumstances which it avers render the matter urgent and the reasons why it claims it could not be afforded substantial redress at a hearing in due course. Applicant did not do this. In fact, even if the hearing before the

Registrar went ahead and the Registrar allocated additional security for costs, the applicant would have substantial redress by challenging it in the High Court. Therefore, in my view the applicant had no justification to bring this application on an urgent basis and it did not make out a case for urgency as required by the rules of court.

[9] In addition, Ms Katjaeurua, who appeared for the respondent herein contends that applicant did not comply with rules 32(9) and (10). It is trite that there must be compliance with rules 32(9) and (10) in an application challenging an irregular step since it is interlocutory.¹

[10] Since applicant flagrantly ignored the peremptory requirements of the rules, I remove the matter from the roll. As a result, I do not consider the merits of the application as to the nature of procedure that is required by rule 59(7) in order to bring the increase of security for costs before the Registrar.

[11] Accordingly, I make the following order:

1. The application is struck from the roll with costs to be capped as contemplated in rule 32(11) of the rules of this court.
2. The parties are directed to make every effort to resolve the dispute about the increase of security for costs and if not, to comply with rule 59(7) of the rules of court in order for the increase of security for costs to be determined by the Registrar.
3. The main action is postponed to **27 April 2023 at 15h30** for a status hearing to give the parties an opportunity to resolve the security for costs issue.

¹ See: Petrus T Damaseb *Court-managed Civil Procedure of the High Court of Namibia: Law, Procedure and Practice* (2020) at 234 para 9-073.

4. The parties shall file a joint status report on or before 20 April 2023.

Judge's signature	Note to the parties:
	Not applicable.
Counsel:	
Applicant	Respondent
<p>Mr Tjiroze Representative of the Applicant</p>	<p>Ms Katjaerua Of Katjaerua Legal Practitioners, Windhoek</p>