REPUBLIC OF NAMIBIA

IN THE HIGH COURT OF NAMIBIA, NORTHERN LOCAL DIVISION, OSHAKATI

JUDGMENT

Case no: I 46/2015

In the matter between:

ZHIQING ZHU **PLAINTIFF**

and

MULTI ELECTRONIC CONSTRUCTION & TECHNOLOGY CC **1ST DEFENDANT**
ALBERT KAU AWENE **2ND DEFENDANT**

Neutral citation: *Zhu v Multi Electronic Construction and Technology CC* (I46-2015) [2015] NAHCNLD 51 **(**05 November 2015)

Coram: CHEDA J

Heard: **19, 26 October 2015**

Delivered: **05 November 2015**

Flynote: A litigant who without lawful cause fails to comply with the Rules of court in general and in particular where he is ordered to do so will have his/her claim or defence dismissed with costs as between legal practitioner and client scale.

Summary: Plaintiff issued out summons against defendants for claim arising from an accident due to 2nd defendant's negligence while acting within the scope and authority of 1st defendant. Defendants entered an appearance to defend. The matter proceeded up to a stage where defendants' legal practitioner withdrew from

the matter. 2nd defendant was asked to engage another legal practitioner, but, failed to do so. He also failed to attend court despite the court order that he should. Mr. Greyling for the plaintiff applied for a final order in terms of Rule 53 in light of defendants' conduct. The application was indeed meritorious and it was accordingly granted.

ORDER

Final judgment be and is hereby granted against 1st and 2nd defendants jointly and severally, the one paying the other to be absolved with costs as between legal practitioner and client scale.

JUDGMENT

CHEDA J:

[1] This is an application for a final order in terms of Rule 53. In this matter plaintiff issued summons out of this court for a claim aiming out of 2nd defendant's negligent driving while acting within the scope of his employment for 1st defendant.

[2] Summons were duly served on the defendants on the 05 March 2015 to which they entered an appearance to defend. Defendants engaged Messrs Mugaviri Attorneys to be their legal practitioners. A Joint Case Plan was compiled and it clearly stated time-lines for filling all other relevant and necessary documents. It is noteworthy that defendants did not file their plea or counter-claim and their legal practitioners withdrew from the case on the 16 June 2015. The withdrawal was, however, defective as it had not been served on the defendants. This was however cured by defendants filing of a return of service.

[3] On four different occasions defendant sought and obtained postponement in order to secure the services of a legal practitioner. The matter was again postponed to the 19 October 2015, but, 2nd defendant was not in attendance and again the matter was postponed to the 26 October 2015 whereat, Mr. Greyling applied for a final judgment in terms of Rule 53 of the Rules of Court.

> "53 (1) If a party or his or her legal practitioner, if represented, without reasonable explanation fails to –
> (a) ...
> (b) …
> (c) comply with a case plan order, case management order, a status hearing order or the managing judge's pre-trial order;
> (d) …
> (e) …
> (f) …
>
> (2) without derogating from any power of the court under these rules the court may issue an order –
> (a) …
> (b) …
> (c) dismissing a claim or entering a final judgment;
> (d) ..."

[4] It admits of no doubt that defendants have not complied with case management requirements *per se,* but, also that 2nd defendant defaulted on the 19 October 2015. The Rules of court enjoins the court to enter a final judgement against a defaulting party for non-compliance with the rules.

[5] Mr. Greyling asked for a final judgment on the basis of defendants failure to comply with the rules regarding case management and also 2nd defendant's failure to appear in court without reasonable excuse, see *Loubser v De Beers Marine Namibia (Pty) Ltd (341/2008) [2012] NAHCMD 68 (30/10/2012)*. In this jurisdiction the

common law principles of the need for litigation to come to an end has been bolstered by the introduction of the new Rules being Gazette No. 5392 which has tightened all the loose screws, as it were, which had allowed litigants to unnecessarily delay the finalization of matters before the courts.

[6] The reason for this, was because the courts were then more of observers and spectators. This has since changed to where the courts are prime movers of all litigation filed with them. For that reason the courts will not allow litigants to drag their feet thereby sliding backwards wherein in some instances matters were allowed to fizzle into thin air.

[7] The rationale about this change could not have been made clearer than in Hubner v Kriegler 2012 (1) NR 191 at 192 C where the learned Judge Damaseb JP remarked:

> "In my view, the proper management of the roll of the court so as to afford as many litigants as possible, the opportunity to have their matters heard by the court is an important consideration to be placed in the scale in the court's exercise of the discretion, whether or not to grant an indulgence. The time taken up by wasteful litigation which could more productively and equitably have been deployed to entertain other matters must, in my view, be an equally important consideration in determining whether or not to condone the failure to comply with the Rules of Court and orders of the court. It is a notorious fact that the roll of the High Court is overcrowded. Many matters deserving of placement on the roll do not receive court time, because of that litigants and their legal advisors must therefore realise that it is important to take every measure reasonably possible and expedient to curtail the costs and length of litigation and to bring them to finality in a way that is least burdensome to the court. In the interest of litigants and the public as a whole, not just the particular ones before court at any given time, the time has come for tighter court control of litigation and stricter adherence to timetables and court directions."

[8] The same sentiments were expressed in Namhila v Johannes (I 3301/2011) [2013] NAHCMD 50 (28/1/2013). The provisions for sanctions against a party's

failure is aimed at errant parties who may consequently prejudice plaintiffs/applicants in their quest for justice. I have no doubt in my mind that defendants conduct towards this matter was aimed at frustrating the plaintiff and this can never be allowed to succeed.

The common English adage that the law has a long arm is indeed true in that irrespective of how long it takes, justice will catch-up with the not so honest litigants regardless where they are. I may add that the law is like an octopus whose tentacles which reach every corner, crack or groove.

[9] In the result the following is the order:

Final judgment be and is hereby granted against 1st and 2nd defendants jointly and severally, the one paying the other to be absolved with costs as between legal practitioner and client scale.

M Cheda

Judge

APPEARANCES

PLAINTIFF:	J. Greyling (Jnr) Of Jan Greyling and Associates, Oshakati
1ST DEFENDANT:	Multi Electronic Construction & Technology Cc David Shikomba Complex, Ongwediva
2ND DEFENDANT:	Albert Kau Awene David Shikomba Complex, Ongwediva