

**REPUBLIC OF NAMIBIA**



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

**JUDGMENT**

Case No: POCA 02/2015

In the matter between:

**SAID NADIRI**

**1<sup>ST</sup> APPLICANT**

**MOURAD DAHMANI**

**2<sup>ND</sup> APPLICANT**

**OXYGEN SPORT WEAR CC**

**3<sup>RD</sup> APPLICANT**

and

**THE PROSECUTOR-GENERAL**

**RESPONDENT**

**Neutral citation:** *Nadiri v The Prosecutor-General* (POCA 2/2015) [2017]  
NAHCNLD 13 (20 February 2017)

**Coram:** CHEDA J

**Heard:** 14 February 2017

**Delivered:** 20 February 2017

**Flynote:** In an application for a rescission of judgment the court has a discretion to grant it if applicant shows good cause and prove that he at no time removed his/her defence and that he has a serious intention of proceeding with the case.

**Summary:** Applicants who were represented by a legal practitioner throughout applied for a rescission of judgment. They withdrew their mandate from their legal practitioner a day before the hearing. The legal practitioner was obliged to appear in court due to short notice as per the Rules and Practice Directions of this court. Their legal practitioner appeared in court and explained that he had no further and /or fresh instructions and therefore could not legally represent them. They were in default as no explanation was given. The application for rescission of judgment was dismissed with costs.

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### ORDER

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1. Application for rescission of judgment is dismissed with costs.

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### JUDGMENT

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CHEDA J:

[1] This is an application for a rescission of judgment which judgment was granted by this court on 15 May 2015. First and Second applicants are the Directors of third applicant, while respondent is the Prosecutor-General of Namibia duly appointed in terms of the constitution and acts in the interest of the State.

[2] Applicants applied for a rescission of judgment on the 16 June 2015 after a couple of postponements, the matter was finally set-down for the 14 February 2017 at 09h00 for hearing.

[3] Applicants were represented by Ms. Tjihero of Messrs Dr. Weder, Kauta & Hoveka Inc., while respondent was represented by Mrs. Nghiyoonanye. At the commencement of the hearing Ms. Tjihero advised the court that applicants had withdrawn their mandate for her law firm to represent them in this matter. In light of

that, they had filed a Notice of Withdrawal as legal practitioners of record on the 13 February 2017, this was a day before the hearing. The legal practitioners were therefore, obliged to attend court in view of the short notice of withdrawal as the rules and practice directions require a legal practitioner to do so under those circumstances.

[4] She further submitted that she had a telephone conversation with her clients who confirmed their instructions that they had withdrawn their mandate against them. She also advised the court that she had advised them to appear in court today in order to explain their positions as they withdrew at short notice or outside the stipulated time in terms of the rules of court. Ms. Tjihero further asked for the court's indulgence, by standing the matter down in order to allow them to appear in court although she had no idea where they were.

[5] Firstly, I find this request untenable in that Ms. Tjihero in her own words told the court that she had advised applicants to attend court in order to explain their positions which they failed to do up to the time when these proceedings were concluded at 09h20. Applicants, despite full knowledge that they were obliged to appear in court, failed to do so and no explanation was given.

[6] In my view, it would have been improper for the court to indulge them at that juncture when they have not made any effort whatsoever to appear in court.

[7] In an application for rescission of judgment the court has an inherent discretion to grant it if applicant shows good cause and prove that he at no time removed his/her defence, and that he has a serious intention of proceeding with the case, see *Van Aswegen v McDonald Forman & Co. Limited* 1963 (3) SA 197 (0) (In Afrikaans) [Headnote].

[8] In *casu* applicants were not in court and therefore deprived themselves of an opportunity to present their case. In the circumstances they are deemed to be in default. They are not before the court and consequently the outcome of their application smoothly leads to the irresistible conclusion of a dismissal.

[9] Mrs. Nghiyoonanye has submitted that their application be dismissed. This is a proper and fitting submission which I have no alternative but to agree with and hence embrace it in its entirety. In the result the following is the order:

1. Application for rescission of judgment is dismissed with costs.

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M Cheda  
Judge

## APPEARANCES

APPLICANTS : F. Kishi  
Of Dr. Weder, Kauta & Hoveka Inc., Ongwediva

RESPONDENT: M. Nghiyoonanye  
Of the Office of the Prosecutor-General, Oshakati