

“ANNEXURE 11”  
Practice Directive 61

**IN THE HIGH COURT OF NAMIBIA**

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| <b>Case Title:</b><br>SEM AMUNYELA KAVILI & 16 OTHERS //<br>ONGWEDIVA TOWN COUNCIL  | <b>Case No:</b><br>HC-NLD-CIV-ACT-DEL-2017/00228                     |
|   | <b>Division of Court:</b><br>HIGH COURT (NORTHERN LOCAL<br>DIVISION) |
| <b>Heard before:</b><br>HONOURABLE MR JUSTICE ANGULA, DEPUTY<br>JUDGE-PRESIDENT   | <b>Date of hearing:</b><br>8 MAY 2019                                |
|   | <b>Delivered on:</b><br>5 JUNE 2019                                  |
| <b>Neutral citation:</b> <i>Kavili v Ongwediva Town Council</i> (HC-NLD-CIV-ACT-DEL-2017/00228) [2019] NAHCMD 58 (5 June 2019)  |  |
| <b>The order:</b><br><br>Having heard <b>Mr Shimutwikeni</b> , counsel for the first, second, third, fourth, fifth, sixth, seventh, eighth, ninth, tenth, eleventh, twelfth, thirteenth, fourteenth, fifteenth, sixteenth and seventeenth applicants and <b>Ms Samuel</b> , counsel for the respondent, and having read the documents filed of record:<br><br><b>IT IS ORDERED THAT:</b><br><br><ol style="list-style-type: none"><li>1. The application is struck from the roll.</li><li>2. The applicant is ordered to pay the respondent's costs.</li><li>3. The matter is removed from the roll and considered finalised.</li></ol> |  |
| <b>Reasons for the above order:</b>   |  |
| <p>[1] The applicant in this application is the second defendant in the main action in which the Ongwediva Town Council (the Council) seeks an order to evict the applicant together with other sixteen defendants from a piece of land which has been declared part of the Council's townland. The applicant has not yet pleaded to the Council's claim for the reason that she intends to file a defence based on the Constitution together with a counter-claim. From the papers filed, it would appear that the counterclaim concerns the compensation she claims she is entitled to receive in</p>                                 |  |

respect of the land which she occupied and which has been allocated to the Council. The applicant claims that her defence and counter claim would implicate the Minister of Land Reform, as a custodian of communal land; the Minister of Urban and Rural Development, as the custodian of the land situated within the local authorities areas; and the Attorney-General in his capacity as the principal legal advisor to the Government. The applicant alleges that the parties sought to be joined, have direct and substantial interests in the right which is the subject matter of the litigation before Court and for that reason she seeks leave that they be joined as parties to the proceedings.

[2] The application is opposed by the Council. In support of its opposition the Council raises a number of points *in limine*. Two of the points *in limine* raised are: that the applicant failed to comply with the provisions of rule 40(5) read with rule 32(4); and that the parties who are sought to be joined to the proceedings have not been served with the application for joinder. In the view, I take with the regard these points *in limine*, it is not necessary to list here the remainder of the points *in limine*.

[3] The points raised on behalf of the Council have not been properly and squarely addressed by applicant except to say that the Council has not suffered prejudice.

[4] The legal position is now well settled and this Court has no reason or intention to deviate therefrom. In *United Africa Group (Pty) Ltd v Uranium Incorporate*<sup>1</sup> the court explained the procedure to be followed when a party or parties are sought to be joined to proceedings before court. In that matter the court explained that the 'directions' contemplated by rule 40 are to be sought before the application for joinder is filed. The application for joinder must then be filed in terms of such directions as are found to be appropriate by the Court. As regards the service of the application for joinder on the parties sought to be joined, the Court held that the application for joinder could not be granted in the circumstances where the parties affected by it have not been cited and have not been served with the application papers to enable them to place their position before court and try to influence the direction of the court which takes into account the rights of all the interested parties. I am particularly in agreement with the court's sentiment where it reasoned that it would not be in the interest of justice for the proposed defendants to be joined without being granted an opportunity to make submissions to the court why they should not be joined and be committed to legal expenses they might not intend to incur.

[5] It is common cause in the present matter that the parties sought to be joined have not been served with the application papers for joinder. It follows therefore, that the applicant failed to comply with the provisions of rule 65(2) which clearly provides that where a relief is sought against a person or where it is necessary or proper to give notice to a person, notice of such

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<sup>1</sup> *United Africa Group (Pty) Ltd v Uranium Incorporate* (1 2527/2014) [2017] NAHCMD 315 (3 November 2017).

application must be addressed the registrar and such person. The point *in limine* of non-service on the parties sought to be joined is thus upheld.

[6] It is for the foregoing reasons the Court made the order above.

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| <b>Judge's signature:</b>  | <b>Note to the parties:</b>  |
|  | Not applicable.  |
| <b>Counsel:</b>  |  |
| <b>Applicants</b>  | <b>Respondent</b>  |
| H Shimukwiken<br><i>of</i><br>Henry Shimutwiken & Co. Inc., Windhoek | A Samuel<br><i>of</i><br>Samuel & Company Legal Practitioners,<br>Ondangwa |