

REPUBLIC OF NAMIBIA



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

RULING


Case Title: <i>Peter Hango Elindi v Lorandu Vilinga Djulu</i>	Case NO: HC-NLD-CIV-ACT-CON-2018/00333
	Division of Court: Northern Local Division
Heard before: Honourable Mr. Justice Cheda	Heard on: 4 June 2019
	Delivered on: 17 June 2019
Neutral citation: <i>Elindi v Ndjulu</i> (HC-NLD-CIV-ACT-CON-2018-00333) [2019] NAHCNLD 64 (17 June 2019)	
The order: <ol style="list-style-type: none">1. Application for upliftment of the bar and for condonation of the late filing of the plea and counter claim is hereby dismissed;2. The Applicant/First Defendant is barred from filling his plea and counter claim; and3. The Respondent/Plaintiff is awarded costs for this application and such costs shall include the costs of one instructing and one instructed counsel.	

Reasons for Order

CHEDA J:

1. On 2 October 2018 the High Court (Main Division) directed that the defendant file his plea and counterclaim, if any, by no later than 11 October 2018. The respondent failed to comply with the said court order by subsequently filing his plea and counterclaim on 12 October 2018 (out of the prescribed time) and contrary to the court order.
2. The First defendant lodged its application for condonation for non-compliance with the court order dated 2 October 2019. They blamed the delay on Ejustice and stated that there has not been any prejudice caused by not adhering to rule 32 (9) and (10).
3. The first defendant in its application did not deal with the prospects of success, The case of *Balzer v Vries* 2015 (2) NR 547 (SC) at 661 J -552 F, the Supreme Court pronounced itself on this matter as follows: 'It is well settled that an application for condonation is required to meet the two requisites of good cause before he or she can succeed in such an application. These entail firstly establishing a reasonable and acceptable explanation for the delay and secondly satisfying the court that there are reasonable prospects of success.'
4. The court is inclined to agree with the Respondents in their arguments; that the applicant has not given a reasonable and bona fide reason for the non-compliance and cannot earn the sympathy of the court. The applicant failed in his founding/replying affidavits and heads of argument by not addressing and fulfilling the necessary requisites for the upliftment of the bar.
5. The first defendant has failed to give effect to rule 32 (9) and (10) and this a gross irregularity when it comes to Interlocutory proceedings.
6. It is due to the abovementioned reasons that the following order is made:

1. Application for upliftment of the bar and for condonation of the late filing of the plea and counter claim is hereby dismissed;
2. The Applicant/First Defendant is barred from filling his plea and counter claim; and
3. The Respondent/Plaintiff is awarded costs for this application and such costs shall include the costs of one instructing and one instructed counsel.


17/06/2019

M CHEDA
JUDGE

APPEARANCES

APPLICANT:

Japhet Gottlieb
Of Amupolo & Co. Inc

RESPONDENT:

Nicky Ngula
Of Ngula & Associates, Ondangwa