REPUBLIC OF NAMIBIA

LABOUR COURT OF NAMIBIA, MAIN DIVISION

JUDGMENT

CASE NO: HC-MD-LAB-MOT-GEN-2020/00282

In the matter between:

LANGER HEINRICH URANIUM (PTY) LTD	**APPLICANT**
and	
JOHN PAVEY FLOOK	**1ST RESPONDENT**
THE LABOUR INSPECTOR: DISTRICT OF SWAKOPMUND	**2ND RESPONDENT**
DEPUTY-SHERIFF: DISCTRICT OF SWAKOPMUND	**3RD RESPONDENT**

Neutral Citation: *Langer Heinrich Uranium (Pty) Ltd v Flook* (HC-MD-LAB-MOT-GEN-2020/00282 [2021] NAHCMD 34 (03 August 2021).

CORAM: MASUKU J

Heard: 06 May 2021

Delivered: 03 August 2021

Flynote: Labour Law – application for stay of execution of award – application for condonation for non-compliance with court rules – requirements to be met – rule 32(9) and (10) – whether they are peremptory in applications for condonation – effect of striking matters from the roll at hearing of labour appeal and the effect thereof on the respondent.

Summary: Before court was an opposed application for condonation of the non-compliance with the rules of the Labour Court and an order staying the implementation of a labour award. The applicant had previously noted an appeal, which was struck from the roll for being defective, whereupon the applicant lodged a fresh appeal and applied for stay of execution of the award, pending the hearing of the freshly lodged appeal.

Held: rule 32(9) and (10) do not apply to applications for condonation because the application is to the court and any agreement by the parties does not bind the court.

Held that: in applications for condonation, the applicant must make out a reasonable explanation for the delay and show that he or she has reasonable prospects of success on appeal.

Held further: that the applicant did not appreciably or at all, deal with the issue of the prospects of success and as such, it was not entitled to condonation.

Held: that where an appeal is struck from the roll at the main hearing for the notice of appeal being defective, the applicant may not lodge a fresh appeal as of right because there is a delay that is incurred, which is detrimental to the respondent and must be fully and satisfactorily explained.

The application for condonation was refused with no order as to costs.

ORDER

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1. The application for condonation is refused.
2. There is no order as to costs.
3. The application is removed from the roll and is regarded as finalised.

JUDGMENT

MASUKU J:

Introduction

[1] Serving before court for determination is an application launched by the applicant Langer Heinrich Uranium (Pty) Ltd chiefly against the 1st respondent, Mr. John Pavey Flook. Other parties, namely, the Labour Inspector and the Deputy Sheriff of the District of Swakopmund have also been cited for the interest that they may have in the relief sought.

[2] In its notice of motion, the applicant seeks an order condoning its late noting of an appeal lodged under case no. HC-MD-LAB-AOO-AAA-2020/00067 and a further order that the execution of an arbitration award issued on 5 May 2021, under Case No. CRSW 119/18, and registered with this court under the case number mentioned immediately above, be stayed pending the final determination of an appeal lodged by the applicant under the case number mentioned earlier.

[3] The applicant further seeks an order restraining and interdicting the 1st respondent from causing and/or proceeding with any action or proceeding geared at the execution of the award mentioned immediately above. The interdict sought refers in particular, to the payment by the applicant of the 1st respondent's severance package equal to more than a week's remuneration for each year of continuous service with the applicant. This payment, the applicant wishes to be stayed, pending the determination of the appeal mentioned in the immediately preceding paragraph.

[4] The applicant also seeks an order against the 2nd and 3rd respondents in terms of which they are interdicted and distrained from executing the award in

question, as described above. Last, but by no means least, the applicant prays for the impugned award to be rescinded.

[5] Needless to say, the application is opposed by the 1st respondent. He came out guns blazing and contends, for reasons to be addressed below that the applicant is not entitled to the relief it seeks.

[6] Because there has been no opposition by the other respondents cited, I will refer to the 1st respondent as 'the respondent'. Where necessary, I will refer to the 2nd and/or 3rd respondent as such. The applicant will be referred to in this judgment as such.

Background

[7] It is common cause that the respondent was previously employed by the applicant. It appears that the employment relationship turned sour and culminated in the respondent lodging a labour dispute with the Labour Commissioner. This dispute related to allegations of discrimination by the applicant against the respondent in that the former did not pay the latter severance pay, which equals two weeks of his remuneration, yet other employees allegedly similarly circumstanced, were paid accordingly.

[8] The referral was determined in the respondent's favour on 5 May 2020. The applicant was on 11 May 2020 called upon to comply with the said award. The applicant is opposed to the implementation of the award hence the relief it seeks.

The applicant's case

[9] In an affidavit deposed to by the Superintendent: Resourcing and Relations, Mr. Gelasius Sheswacho, the applicant states its case and bases for seeking the relief stated above. Its main contention is that the respondent's employment contract did not make provision for a severance package being due

to him and which is equal to more than a week's remuneration for each year of continuous service with the applicant.

[10] The applicant further holds the view that the provisions of s 35(3) of the Labour Act, 2007, ('the Act'), do not make provision for payment of a severance package to the respondent in the terms granted in the award. It is the applicant's further case that the evidence adduced at the arbitration, did not justify an award in relation to the severance package as issued. In this regard, the applicant makes bold and claims that the arbitrator did not have jurisdiction to issue the said award in addition to what was prescribed by the Act, as this constituted a dispute of interest and not of right.

[11] The applicant deposes that after the issue of the award, it noted an appeal against the award vide the case number mentioned earlier. This appeal was struck from the roll because it was held that the notice of appeal was defective. The applicant then immediately thereafter delivered a fresh notice of appeal, which was served on the respondent.

[12] It is the applicant's case that in view of what is stated above, it enjoys prospects of success on appeal as the arbitrator acted beyond the remit, namely of jurisdiction and thus misapplied the applicable law. It also claims that it noted the appeal without delay after its previous appeal was struck from the roll as aforesaid.

[13] It is the applicant's further contention that although such matters should be resolved in a speedy manner, the respondent will not suffer any prejudice given its prospects of success on appeal. It was the applicant's further case that it unconditionally tendered the amount of N$ 257,561.71 and a further amount of N$ 5000 to the respondent. It similarly tendered a guarantee issued by its legal practitioners in respect of the balance of the award. The applicant further expressed its willingness to pay the said amount into court, to the respondent's benefit, should the appeal eventually fail.

[14] A further reading of the applicant's founding affidavit shows that the applicant complains that the warnings that have previously been issued by this court for successful parties to await the period of 30 days before enforcing a favourable award was not observed by the respondent in the instant case. The court was thus moved to invoke rule 103 of the High Court Rules and to rescind the order as it was registered before the lapse of the 30-day period allowed for possible appeal.

[15] It was finally, the applicant's contention that for the other reasons canvassed above, the court was at large to invoke rule 103 as the award was issued irregularly and was thus improperly obtained. What is the respondent's take on these contentions?

The respondent's case

[16] The respondent deposed to an answering affidavit. The first issue taken by the respondent is that there is a similar application pending before this court under case no. 2020/00152 launched by the applicant on 21 July 2020 and it relates to the same matter and the same relief, apart from the fact that condonation is prayed for in this application.

[17] *In limine,* the respondent took the point that the applicant has approached this court with 'unclean hands' as the conduct of the applicant is 'dishonest or fraudulent.' It is the respondent's case that the arbitrator ordered costs in his favour on account of the vexatious and frivolous conduct of the applicant. In this regard, an order for payment of costs in the amount of N$ 5000 was issued in the award.

[18] The respondent contends that in the absence of an appeal against the costs order, it must be accepted that the applicant acted vexatiously and frivolously in the circumstances. It is the respondent's contention that the applicant has continued in this matter with its vexatious and frivolous conduct and that the application should be dismissed.

[19] I must point out that the applicant, in his answering affidavit, covers many issues that may not be germane to the determination of this matter, particular regard had to the case made by the applicant. I will, in this regard, consider those aspects that answer to the allegations contained in the applicant's papers, or those that have a bearing on the case. This is done so that we do not drift from the case made out, with the court finding itself addressing matters which have no direct, necessary and beneficial bearing on the germane issues placed before it.

[20] It is the respondent's case that in terms of his employment contract, he was to retire at the age of 60, in August 2013 but at the applicant's behest, he was requested to serve until he reached 65 years. It is his case that he was assured that he would 'receive severance pay upon retirement and I agreed to an extension of my contract of employment until 31 August 2013, being the last day of the month in which I would turn 65 years old.'

[21] The respondent further deposes that the applicant, through a memorandum, which was sent to him, following a collective agreement with the unionisable employees, 'confirmed that that the severance package *"for employees in the Bargaining Unit"* will be offered to all the "*employees outside the Bargaining Unit"*.[1] It is thus his case that the collective agreement was varied to include non-bargaining employees of the applicant, including himself.

[22] It is the respondent's further case that during the arbitration, his version, as recounted above, was accepted by the applicant's legal practitioner and for that reason, the applicant can no longer dispute his evidence or attempt to ascribe a different meaning or interpretation to the acceptance. He states that he spoke to a Mr. Introna, about this issue, including a Mr. Resandt, who instead of retiring was being retrenched and thus forfeiting the severance pay. Mr Introna, who was the applicant's Managing Director, informed the respondent and said, 'Johnny, I think everybody should receive the same',[2] which included the respondent.

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[1] Para 20 of the answering affidavit.

[2] Para 24 of the answering affidavit.

[23] It is the respondent's case, that upon his request, Mr. Introna wrote an email, in his presence where he stated in part that, 'I hereby confirm that you will receive 12 years of service in the calculation of your severance pay.'[3] It will be seen from what is stated above, that the respondent contends that he was entitled to the severance pay as this was awarded to him as an employee of the applicant and was further confirmed in writing by Mr. Introna. To this extent, it stands to reason that the respondent states that the arbitrator was thus correct in awarding him the severance pay that she did.

Jurisdiction

[24] In relation to the issue of jurisdiction, it is the respondent's case that the applicant is raising this issue for the first time before this court and never canvassed this issue before the arbitrator. It is the respondent's case, in any event, that his case, which relates to severance pay in terms of s 35 of the Act falls well within the jurisdiction of the arbitrator. To this extent, contends the respondent, the applicant has no reasonable prospects of success on appeal.

Stay of execution

[25] Regarding the question of stay of execution proceedings, the respondent's take is that the applicant does not address its financial position in the founding affidavit and furthermore, does not make any allegation to the effect that if the execution is allowed to ensue, it will suffer irreparable harm. It is the respondent's further contention that despite the award being made an order of this court on 9 June 2020, the applicant brought an application for stay under case 2020/00152 in the normal course and not on urgency as would be expected, given the urgency that should ordinarily attach to such applications.

[26] The respondent also reminds the court that in terms of the Act, an appeal does not serve to stay the execution of an award in favour of an employee. The respondent further states that he is not a man of straw and as such if the appeal should succeed, he would be able to make good any money that may be

[3] Para 25 of the answering affidavit.

adjudged to be due to the applicant, thus pointing in the direction of a refusal of the application for stay. To this end, the respondent made a judicial guarantee via Bank Windhoek for the amount of the award. It is thus alleged that the applicant would not suffer irreparable harm if the award were executed.

[27] Without necessarily regurgitating all the allegations, some of which are serious by the respondent, he states that the applicant did not put up any guarantee before court. The applicant tampered with his guarantee and then ascribed it to itself. For the reason that there is no guarantee, the application for stay should fail, the respondent finally contends.

[28] The respondent further alleges that the applicant has not placed its financial circumstances bare before court and this is because it is in financial dire straits. Reference is made to a document by Price Waterhouse Cooper in this regard, stating the financial losses incurred by the parent company of the applicant.[4]

[29] The applicant, in reply, stated that there was a difference of opinion regarding the extension of the respondent's employment, namely, whether it was a fixed term contract or it was extended by the 2013 contract. The applicant tool the view that the respondent was on a fixed term contract and was therefor not entitled to a severance package.

[30] Counsel's opinion was sought and the advice rendered was that the respondent whose view was that the respondent was entitled to a severance package because his 2013 contract had been extended to 31 August 2018. In this regard, the applicant was entitled to his full severance package, based on continuous service for 12 years. The issue for determination, was whether the respondent was entitled to severance allowance of more than one week per completed year.

[31] The applicant further states that it tendered payment of an amount of N$ 265,431.17 for severance pay contemplated by s 35(5) of the Act, together with

[4] The respondent quoted an extract allegedly from the Auditor's report.

interest, an amount of N$ 5000 for costs. The respondent rejected the offer out of hand.

[32] The applicant took the position that it was unnecessary to call Mr. Rossouw during the arbitration because the question was whether the respondent had been paid in excess of the statutory prescripts. On the other hand, Mr. Resandt, who was also called as a witness, occupied a position that was part of the bargaining unit and had been retrenched. Accordingly, the applicant contends that the respondent was, at all times treated with respect in dealing with his issue.

[33] The applicant further persists that the arbitrator erred in dealing with the matter in that she remarked in the award that parties are at large to negotiate severance allowance above the statutory limit. The finding to pay the respondent more than one week's remuneration, the applicant contends, exceeds the arbitrator's jurisdiction because that issue involves issues of interest and not of right.

[34] The applicant reiterates that it paid the amount of the award, together with the legal costs in its legal practitioners' trust account and that the amount is still so held. Further, the applicant denies that it is in financial dire straits as alleged by the respondent. This is because the amount, which is the subject of the matter, was paid into the applicant's legal practitioners' trust account.

[35] The applicant admitted that it had filed a wrong guarantee together with its founding affidavit, but corrected this in reply by attaching the correct guarantee, which is dated 20 July 2020 and was issued by ENSafrica / Namibia in favour of the respondent. It is further the applicant's case that the allegations about the applicant's alleged impecuniosity are scandalous and vexatious and ought to be struck out therefor. This is particularly pronounced in view of the guarantee in question.

[36] It is now opportune that I proceed to determine the issues at play, so as to bring the matter to a close. Before I do so, however, it is imperative that I point

out that parties, especially in interlocutory matters, should appreciate that the scope of the issues is, barring a few cases, narrow. To that extent, they should ensure that they deal strictly with the germane matters to the degree necessary and required in the particular matter.

[37] I should, in this regard, level some criticism on the respondent in this matter because it has been found fit, on his behalf, to venture into matters that do not bring the issues raised to a close. Whereas a matter may be interesting and relevant to the eventual issue to be decided on the merits, it is oppressive for the court and the other side, to be forced to read bulky papers that extend far beyond the remit dictated by the relief sought and the basis thereof.

[38] Matters addressed in the papers, together with the heads of argument, must be strictly confined to the germane matters raised. They should not be allowed to extend to irrelevant matter. Otherwise, this will tend to defeat the purpose of interlocutory matters and render them unnecessarily detailed regard had to the real issues in dispute. This may redound unfortunately, to making the work of the court more difficult and convoluted than should be the case. As a result, the object of the rules, to have interlocutory applications dealt with speedily, may well be defeated.

Determination

[39] I now proceed to deal with the legal issues that arise. I will deal with these issues in turn. The first is the alleged non-compliance with rule 32 (9) and (10).

Non-compliance with Rule 32 (9) and (10).

[40] The contention of the respondent in this regard is that the application for stay moved by the applicant is interlocutory in nature. For that reason, continues the respondent, the applicant was compelled to comply with the provisions of rule 32(9) and (10), which, stripped to the bare bones, make it mandatory for the parties, in interlocutory matters, to attempt to meaningfully resolve the interlocutory application in issue, amicably.

[41] Failure to comply with the said subrules attracts a sanction, namely, the matter being struck from the roll.[5] The question for determination is whether there is need to comply with the said subrules in cases where the applicant seeks condonation of a non-compliance with the rules or an order of court, for one or other reason.

[42] The approach that has emerged is that in cases where a party seeks condonation, it is not strictly necessary for the applicant for condonation to comply with the said subrules. This is so notwithstanding that the application is undoubtedly interlocutory. The reason is that the application is directed to the court and the non-errant party can do no more than indicate its attitude to the application.

[43] Even if it decides not to oppose the condonation application, that does not settle the interlocutory hearing because it is the court that must have a final word as to whether a reasonable explanation has been given and whether it should exercise its discretion in favour of the errant party. It would appear, for that reason, that the parties do not have the capacity to resolve the issue at the heart of the interlocutory hearing and resorting to the said subrules does not serve to advance the determination of the interlocutory hearing to any meaningful degree.

[44] In this regard, there are a few cases, which espouse the view that in such applications, the parties are not strictly required to comply with the subrules in question for the reasons advanced above.[6] For the above reasons, I hold the view that it would be an incorrect step to strike the matter from the roll in the instant case, as the provisions of rule 32(9) and (10) are not strictly necessary to comply with. This is so because of the relief sought about which the parties can do nothing to resolve.

Condonation

[5] *Appolus v Mukata* (I 3396/2014) [2015] NAHCMD 54 (12 March 2015).

[6] *Witbooi v Minister of Urban and Rural Development* (HC-MD-CIV-MOT-GEN-2019/00225) [2020] NAHCMD 279 (9 July 2020) *Walenga v Nangolo* (HC-NLD-CIV-ACT-CON-2020/0091) [2020] NAHCNLD 122 (31 August 2020).

[45] It is the respondent's case that the application for condonation should fail. This, it is argued, is because the applicant, has in its papers failed to make out a case for that relief. It is further contended that the applicant merely paid lip service to requirements of condonation. It is, in particular submitted that there is no case made out regarding the reasonable explanation for the delay. Is there any merit in this contention?

[46] It is now settled law that for a party to succeed in an application for condonation, that party should proffer a reasonable and acceptable explanation for the delay. Secondly, the said party must show that it has reasonable prospects of success on appeal. These are allegations that should appear in the founding affidavit in support of the application for condonation.[7]

[47] In order to decide that issue, regard will be had to the applicant's founding affidavit. I should mention in advance, that the in my considered view, the applicant has made an arguable case regarding the prospects of success. This is to be regarded in appreciation of the requirements on an applicant for condonation at this stage and must be considered on the balance and not with the strictness that may be required on the actual appeal.

[48] The main question, is whether the applicant has met the requirement regarding a reasonable explanation for the delay. The deponent to the founding affidavit stated that on 9 June 2020, the applicant noted an appeal and the said appeal was adjudicated on 13 November 2020 and it was struck from the roll due to the court holding that the notice of appeal was defective. It is the applicant's case that it immediately, on 13 November 2020 delivered a fresh notice of appeal.

[49] It is the respondent's case that the applicant could not, as of right, file the 'new notice of appeal' because it would have been filed out of time. To enable it to so file the same, it needed condonation from the court, which it did not seek. It

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[7] *Petrus v Roman Catholic Church and Another* (A 127/2005) [2012] NAHC 313 (14 November 2012)

is the respondent's further case that the applicant, in order to be granted condonation, needed to explain the period from 5 May 2020, the date of the issuance of the award to 16 November 2020, when the new notice of appeal was served on him. The latter date would appear to be incorrect though because it must be the date of filing that is considered, namely 13 November, 2020, which makes a little difference in any event.

[50] I am of the considered view that the founding affidavit is as bare as it can be regarding the question of the delay. The applicant appears to have overlooked dealing with the question of the delay in its founding affidavit and this is fatal to its application for condonation. I also agree with the respondent that once the appeal was struck from the roll, so many months after the lodging of same, it was not open to the applicant to merely file a new notice of appeal without any explanation and condonation having been filed, considered and granted by the court.

[51] I say so for the reason that the Act stipulates when appeals are to be noted. This present one was noted and the appeal went through the entire gauntlet of filing and related processes over some time and it was only at the hearing that it was struck from the roll, some months after the appeal was noted. I hold the view that in such a case, because of the prejudicial effect it has on the respondent, it would be necessary for a litigant in the applicant's position, to explain why it has to file a new notice of appeal, so many months later and it is only a court that can, in my considered view grant condonation in that regard.

[52] The effect of the new notice of appeal is far-reaching. I say so because it moves the appeal, which has been heard back to square one. It effectively erases all the steps that would have previously been taken and winds the hands of time seriously backwards to the respondent's detriment. It cannot be that a party, in these circumstances, can, without seeking and obtaining leave, file a new notice of appeal as of right. The period to be accounted for in this regard, is calculated by the respondent to be a whopping 195 days. I do not grapple with the correctness of the calculation.

[53] I should mention in this regard that the striking of a labour appeal from the roll at hearing, is not akin to striking a civil application from the roll. In the latter case, ordinary civil case, once a matter is struck from the roll, one need only file an application for reinstatement, together with an explanation for the striking of the matter off the roll. In this case, as stated above, the passing of time has serious prejudice to the respondent, as recorded above and different considerations should accordingly apply to striking of matters off the roll.

[54] Coming to the present application, as I have said, the applicant did not deal with the issue of presenting a reasonable and acceptable explanation for the delay. This is fatal to its application. In this connection, a full, detailed and accurate explanation is necessary to be placed before the court to enable it to move its hands in favour of the applicant for condonation.

[55] In this case, it is apparent that there a number of rules that were not complied with, namely, rules 17(2), (3), (4) and rule 23(2) of the Conduct of Conciliation and Arbitration rules. Not a word is said regarding these. It has been stated times without number that condonation is not granted merely for the asking and a litigant who is chary with relevant information that may assist the court in exercising its discretion in his or her favour, courts disaster.

[56] In *Nangolo*[8] the Supreme Court, dealing with issues of condonation, remarked as follows:

> 'There are a number of decided cases both in this jurisdiction and in South Africa that demonstrate that the prospects of success on appeal, though an important consideration, standing alone are not a decisive consideration. There are also a number of cases that show that despite the prospects of success being good, an application for condonation may or should not be granted if there was a gross violation or non-observance of the rules.'

[8] *Telecom Namibia v Nangolo and Others* (SA-2012/62) [2014] NASC 23 (25 November 2014), para17.

[57] I am of the considered view that the applicant in this case, did not comply with the rules and more importantly, did not explain the reasons for the con-compliance sufficiently or at all. This failure, in my view justifies this court in non-suiting the applicant because it has failed to meet one key requirement of an application for condonation. The delay is egregious and the non-compliance is by no means trifling.

[58] It then follows, as night follows day, that the application for condonation having been dismissed, that there is no need for the court to consider the balance of the relief sought by the applicant. The refusal of condonation constitutes a shattering blow to the entire application.

Application before Geier J

[59] It is common cause that there was placed before Geier J an appeal to which the present application is linked. The learned Judge, in his wisdom, struck that application from the roll. I requested the parties to address this court about the possible consequences of the ruling by Geier J and they did so.

[60] I am of the considered view that in the light of the conclusion of the court, as recorded above, it is not necessary that I should venture into that case as it is rendered unnecessary. It is only fitting to mention that the learned Judge excoriated the applicant's handling of the matter before him in unflattering terms. All things being equal, the fact that the matter was struck from the roll by Geier J would, all things being equal and regard to what I have stated above, have had a deleterious effect on this matter. I need say no more of this matter in view of the decision to which I have arrived.

Conclusion

[61] It will be apparent, from what I have stated above, that the applicant has failed to meet all the requirements of an application for condonation. As such, the application for condonation stands to be refused, translating in the other relief

being unable to survive in the absence of the condonation. The application must accordingly fail.

Costs

[62] The law recorded in s 118 of the Act, is clear. This court is not at large to mulct an unsuccessful party in costs unless the proceedings qualify to be regarded as vexatious or frivolous. The meaning of these words has been the subject of a number of judgments in this court. I need not burden this judgment with same.

[63] The question that needs the return of an answer is whether it can be said that the applicant in this matter meets the threshold of the realms of the vexatious and frivolous. In this regard, it must be mentioned that the fact that a party has been unsuccessful in proceedings, does not, without more, entitle the court to grant costs against him or her. There are policy reasons behind this.

[64] The respondent argues that the arbitrator, in the award, found that the applicant acted frivolously and vexatiously and that this finding has not been appealed and therefor stands. The imputation of vexatiousness and frivolousness accordingly stand. That may be so but what should not sink into oblivion, is that the applicant was on the receiving end of an adverse costs order therefor. The vexatiousness found at arbitration should not be transposed to these proceedings, resulting in a possible case of double jeopardy.

[65] I am not persuaded that the applicant can be said, in the circumstances of this case, to have acted in a frivolous and vexatious manner. It would seem the applicant was impelled by a desire to right what it considers to be a wrong committed by the arbitrator. It did so in a dogged manner but that does not translate into vexatious or frivolous litigation. In this connection, I should confine my conclusion in this regard, to the facts before me.

[66] My judgment should not be clouded by the bad blood between the protagonists and the raw emotion that at times manifested itself in the papers and

in argument. On a proper conspectus of the matter before me, I am of the view that the proceedings cannot be properly regarded as frivolous or vexatious. Costs may therefor not be granted.

Order

[67] In the premises, I am of the view that the following order should be issued:

1. The application for condonation is refused.
2. There is no order as to costs.
3. The application is removed from the roll and is regarded as finalised.

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T. S. Masuku

Judge

APPEARANCES

FOR THE APPLICANTS	T. Muhongo Instructed by ENSAfrica | Namibia, Windhoek
FOR THE RESPONDENT	C. Bazuin Of Bazuin Legal Practitioners