

**REPORTABLE**

CASE NO: SA 41/2012

**IN THE SUPREME COURT OF NAMIBIA**

In the matter between:

**ONESMUS SHEEHAMA**

**Applicant**

and

**MOTOR VEHICLE ACCIDENT FUND**

**Respondent**

**Coram:** MAINGA JA, SMUTS JA and CHOMBA AJA

**Heard:** 13 April 2016

**Delivered:** 19 April 2016

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**REASONS**

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MAINGA JA (SMUTS JA and CHOMBA AJA concurring):

[1] On 13 April 2016 we gave an order in this matter after having heard the applicant in person and Mr Muluti for the respondent. What follows are the reasons for the order.

[2] When the above matter was called at 10h00, Mr Muluti who appeared for the respondent informed the court that the legal representatives of the appellant

were not at court. Mr Muluti was asked whether they had communicated with him. Mr Muluti indicated that he had difficulties to locate counsel for the appellant in this matter even at the time he wanted to find out when they would file heads of argument. Mr Muluti nevertheless informed court that the applicant was present in court. Mr Sheehama stood up and informed court that he was appearing in person. The court enquired from Mr Sheehama as to where his legal representatives were and why they were not at court. He indicated that he did not place them in funds and he was appearing in person to seek a postponement of the appeal. He was informed that there was no appeal before court as the appeal had lapsed. He was also informed that what was before court was the application for condonation for the late filing of the record and reinstatement. The court enquired whether he was in a position to address the court on the application for condonation, to which he said he was not.

[3] Mr Muluti submitted that the application for postponement should be dismissed, the application for condonation struck off the roll and that the legal representatives of the applicant be ordered to pay the wasted costs of 13 April 2016, for their failure to appear in court when there was no notice that they had withdrawn from the case.

[4] The least that the legal representatives for the applicant could have done is to file notice of withdrawal with this court. To stay away from court when the record shows that they are still the legal practitioners of the applicant is so disrespectful, unacceptable that it deserves censure. This is reflected in the court order we gave.

[5] The application for a postponement was so inept, more so that there was no appeal before court to postpone. Even if there was an appeal to postpone the application would have failed, regard being had to the reasons upon which it was premised. The reasons that there is a pending or a possible appeal by the State in a criminal case in which the applicant was acquitted and that he needed time and financial resources spared for the criminal matter is so unrelated to the case that was before court, and in my opinion the application deserved to be dismissed. No application was brought to postpone the application for condonation. It was accordingly struck off the roll.

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**MAINGA JA**

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**SMUTS JA**

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**CHOMBA AJA**

APPEARANCES

APPLICANT:

In Person

RESPONDENT

P S Muluti

Instructed by Muluti & Partners