

NOT REPORTABLE

**REPUBLIC OF NAMIBIA**



**HIGH COURT OF NAMIBIA MAIN DIVISION, WINDHOEK**

**JUDGMENT**

**CASE NO. POCA13/2015**

In the matter between:

**THE PROSECUTOR-GENERAL**

**APPLICANT**

and

**ALEXES PAULO**

**1<sup>ST</sup> RESPONDENT**

**RHAPSODY CLOSE CORPORATION**

**2<sup>ND</sup> RESPONDENT**

**Neutral citation:** *The Prosecutor-General v Paulo* (POCA 13/2015) [2017] NAHCMD  
43 (17 February 2017)

**Coram:** ANGULA, DJP

**Heard:** 19 October 2016

**Delivered:** 17 February 2017

**Flynote:** Applications and Motions – Interlocutory Applications - Interlocutory application for leave to file confirmatory affidavits to a founding affidavit in a main application for a forfeiture order in terms of the Prevention of Organised Act, 2004 (POCA) – The overriding consideration is the interests of justice - Highly technical objections should not be allowed to undermine or stand in the way of the interest of justice and to deprive the parties the opportunity to fully ventilate the real issues between the parties - Application granted.

**Summary:** Applications and Motions – Interlocutory Applications – The applicant filed an interlocutory application for leave to file confirmatory affidavits to a founding affidavit in a main application for a forfeiture order in terms of the Prevention of Organised Act, 2004 (POCA). The respondents filed an opposition to the granting of the forfeiture application. They raised a defence (against the allegation of suspected money laundering) that the second respondent is an appointed agent of Bank Windhoek and as such was allowed to exchange foreign currency. Regarding the interlocutory application to file confirmatory affidavits, the respondents mainly put in issue the probative value of the contents of the letters from the Bank of Namibia and Bank Windhoek respectively, attached to the applicants founding affidavit (which stated that second respondent was not an appointed agent to deal in foreign currency) and contended that such letters constituted inadmissible hearsay evidence in that no confirmatory affidavits were filed by the authors of those letters. The applicant explained that she endeavoured to obtain the affidavits from the relevant institutions prior to the launching of the main application, but due to lack of co-operation and recalcitrant behaviour of the officials of the institutions concerned, she could not file the confirmatory affidavits at the time the forfeiture application was due for launching.

The basis of the respondents' opposition to the granting of leave to file confirmatory affidavits was that: the applicant should not be allowed to supplement and strengthen her

case after the period of 120 days has expired otherwise she would be circumventing the mandatory provisions of section 53 of POCA; that if the affidavits were allowed, the respondent would be deprived of their right to attack the applicant's case namely that she had failed to make out her case for the forfeiture order in her founding affidavit; and that the respondent would be prejudiced in that they have already filed their opposing affidavit in which they identified the material defects in the applicant's case.

*Held that* – In such an application, the court should have regard to the factors such as the applicant's explanation which negatives mala fides or culpable remissness.

*Held that* – The overriding consideration is the interests of justice. Highly technical objections should not be allowed to undermine or stand in the way of the interest of justice and to deprive the parties the opportunity to fully ventilate the real issues between the parties

*Held that* – One of the requirements for allowing additional affidavits is that the court must be satisfied that no prejudice is caused to the opposite side. Held that the respondents would not suffer real prejudice if the confirmatory affidavits are allowed into evidence: they will only lose a tactical and technical point which has nothing to do with the overriding objective of the rules of this court, namely to facilitate the resolution of the real issues.

*Held that* – There is no rule or principle of law that says that a court is only entitled to exercise its discretion if additional affidavits are to be filed before the other party has replied. Application granted.

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### ORDER

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1. The application is granted.

2. To the extent that the respondents may suffer prejudice as a result of this court granting leave to the applicant to file the confirmatory affidavits the respondents are granted leave to file affidavits, if so advised, the contents of such affidavits to be confined solely to new the matters, if any, raised in the applicant's confirmatory affidavits.
3. The applicant is ordered to pay the respondents' costs.

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## JUDGMENT

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ANGULA, DJP:

### Introduction

[1] I have before me an interlocutory application, in a main Prevention of Organised Act, 2004 (POCA) application, for leave to file confirmatory affidavits to the founding affidavit. The application is opposed by the respondents.

[2] The applicant is the Prosecutor-General of Namibia. The first respondent is Alexes Paulo, a major businessman who is the sole member of the second respondent Rhapsody Close Corporation

[3] The applicant is represented by Mr Boonzaier, whereas Mr Namandje appears for the respondents. Both counsel filed comprehensive heads of argument and the court wishes to thank them for their diligence.

### Background

[4] The background to the application can be briefly summarized as follows:

- 4.1 During December 2015 the applicant applied for a preservation of property order. The preservation order was granted on 25 December 2015. The preservation order was published in the Government Gazette on 8 January 2016. On 5 February 2016, the respondents filed a notice of intention to oppose the forfeiture application together with their affidavit in terms of section 52(5) of POCA. The basis of the opposition was that the respondents were agents of Bank Windhoek and were authorized to trade in foreign currency.
- 4.2 On 12 April 2016 Warrant Officer Nambadi requested Bank Windhoek for documentation in terms of section 179 of the Criminal Procedure Act. On 22 April 2016 Bank Windhoek provided Warrant Officer Nambadi with a letter advising that the respondents are not agents of Bank Windhoek as alleged
- 4.3 On 6 May 2016 the applicant filed a forfeiture application in terms of section 59 of POCA which was served on the respondents.
- 4.4. On 17 June 2016, the respondents filed an answering affidavit which was out of time.
- 4.5 On 27 July 2016, the applicant filed an application to file confirmatory affidavits. The respondents opposed this application.
- 4.6. On 31 August 2016 the respondents filed an application for condonation of the late filing of the answering affidavit.
- 4.7 At a case management hearing on 7 September 2016, the respondents' application for condonation for the late filing of the answering affidavit was granted. The parties were then directed to file their heads of argument in respect of this interlocutory application relating to the applicant's application for leave to file further affidavits.

#### Issues for determination

[5] The issues for determination in this matter is whether the confirmatory affidavits sought to be filed by the applicant may be admitted into evidence; whether the applicant has furnished a satisfactory explanation for her failure to initially file such confirmatory affidavits with her founding; and whether the court should exercise its discretion in favour of the applicant to allow the late filing of such confirmatory affidavits.

### Applicable legal principles

[6] The applicable legal principles are well known and are entrenched, both by case law and the rules of our courts. Ordinarily three set of affidavits are allowed in motion proceedings, namely the founding affidavit, the answering affidavit and the replying affidavit. The court may however, in its discretion on good cause shown, allow the filing of further affidavits. In such event leave to file further affidavits, out of sequence may only be allowed, where there was something unexpected by the applicant when the applicant filed his or her replying affidavit; where a new matter was raised; or where the information was not available to the applicant (or could not be made available) when the founding affidavit was filed and before the answering affidavits could be filed. The applicant must give a satisfactory explanation which negatives *mala fide* or culpable remissness as to why the information could not be put before court at an earlier stage: and the court must be satisfied that no prejudice is caused to the opposite party.<sup>1</sup>

[7] These principles are further entrenched in rule 66 (4) of the rules of this court which envisages the filing of “*further affidavits*” after a replying affidavit has already been filed.

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<sup>1</sup> See; James Brown & Hammer (pty) Ltd v Simmons , N.O 1963 (4) 656 at 663 E-G; Mauno Haindongo t/a Onawa Wholesalers v African Experience Ltd t/a Fred Mac Energy Resources delivered on 26 July 2005 Case Number A 104/2005; and Rally for Democracy and Progress and Others v Electoral Commission of Namibia and Others 2013 (3) NR (SC) 664

### The applicant's case

[8] It is common cause that on 4 February 2016, the respondents filed their affidavit in terms of section 52 (5) of POCA, opposing the granting of the forfeiture order. They raised a defence (against the allegation of suspected money laundering) that the second respondent is an appointed agent of Bank Windhoek and as such was allowed to exchange foreign currency. No documents were, however, attached to the affidavit to confirm such appointment. In addition, the respondents put in issue the admissibility of the letters from the Bank of Namibia and Bank Windhoek respectively, attached to the applicants founding affidavit (which stated that second respondent was not an appointed agent to deal in foreign currency) and contended that such letters constituted inadmissible hearsay evidence in that no confirmatory affidavits were filed by the authors of those letters.

### The applicant's explanation

[9] The applicant explains why the information could not be put before court at an earlier stage. She states that after the respondents' affidavit in terms of section 52 (5) was received, an investigation was launched in order to verify the veracity of the respondents' claim that the second respondent was an appointed agent to deal in foreign currency; that a request was made to the Namibian Police Commercial Division: Assets Forfeiture Subdivision, which is responsible for conducting financial investigation, to enquire from both the Bank of Namibia and Bank Windhoek as to whether the second respondent is indeed an appointed agent of Bank Windhoek as a dealer in foreign currency as alleged.

[10] The applicant explains further that Warrant Officer Nambadi, who was the appointed investigating officer in terms of POCA, then approached the Bank of Namibia and Bank Windhoek respectively and requested confirmation from the said banks of the allegation that the second respondent is indeed an appointed agent. Warrant officer Nambadi also deposed to an affidavit in which she explained her investigation. In respect of the Bank of Namibia, Warrant Officer Nambadi states that she was informed by the officials of that Bank that they were not familiar with the technical aspect of an affidavit and that they would revert to her at a later stage with an affidavit; and that they would inform her when she could collect the affidavit from the Bank of Namibia. Nobody from the Bank reverted to her within the limited time period available in which the forfeiture application was due to be launched

[11] With regard to the request directed to Bank Windhoek, Warrant Officer Nambadi says that she spoke to one, Mr Frikkie Viljoen, who refused to provide information under oath but was only prepared to provide her with a letter to the effect that the second respondent is not an agent of Bank Windhoek. Mr Viljoen indeed provided Warrant Officer Nambadi with such a letter. Warrant Officer Nambadi in her investigation also approached the Ministry of Finance. She was informed that the employees of the Ministry of Finance were not allowed to make affidavits and that such a request must be made by the applicant herself to the Permanent Secretary of the Ministry of Finance.

[12] The applicant points out that in terms of POCA, a preservation order is only valid for a period of 120 days after publication in the Government Gazette. The 120 days was due to expire on 6 May 2016. As a result of imminent deadline, the applicant's affidavit in support of the forfeiture application was filed without confirmatory affidavits being obtained from Bank of Namibia, Bank Windhoek and/or the Ministry of Finance. The application was filed in order not to fall foul of the provisions of 120 days prescribed by POCA. The applicant points out that the letters from both Bank of Namibia and Bank

Windhoek were attached to the founding affidavit, recording that the second respondent was not an authorized dealer in foreign currency.

[13] The applicant explains further that after explaining to the officials of Bank Windhoek, Bank of Namibia and Ministry of Finance that they might be called upon to orally testify under oath, should the court find that the information contained in their letter amounted to hearsay evidence, it was only then that the said officials agreed to depose to confirmatory affidavits confirming the information contained in their letters which are attached to the affidavit of Warrant Officer Nambadi. These are the confirmatory affidavits which are the subject matter of this application.

[14] The applicant stresses that due to the time constraints as well as the initial recalcitrant behaviour of the officials concerned, the information could not be provided at an earlier stage. Finally the applicant submits that no prejudice or injustice would be suffered by the respondents if leave is granted to her to file the confirmatory affidavits. In this respect, the applicant points out that the information contained in the confirmatory affidavits is the same information contained in the letters; and that it should have been deposed to under oath and filed together with the founding affidavit but for the deponents' non-cooperation. Furthermore, that no new issues would be introduced by the confirmatory affidavit as all the information that was relied upon had already been set out in the founding affidavit. Finally the applicant stresses that it will be in the interest of justice to allow the confirmatory affidavits into the record

[15] The respondents' opposing affidavits to this application was deposed to by Mr. Sisa Namandje who is the legal representative for the respondents in this matter. Mr. Namandje argues that the applicant's application is both substantively and procedurally defective; that the applicant is not entitled to supplement her founding affidavit, particularly after the filing of the answering affidavit; and that the applicant was under

obligation to make out her case in her founding affidavit which she failed to do by largely relying on inadmissible hearsay evidence.

[16] I feel obliged to make an observation here that this practice by legal practitioners of filing an affidavit on behalf of a client should be discouraged and desisted from. It should only be resorted to in exceptional cases, for instance where the party to the proceedings is for compelling reasons unable to depose to an affidavit. Such reasons must be disclosed in the affidavit deposed to by the legal practitioner. In the instant matter no explanation has been given why the first respondent could not depose to the affidavit. An affidavit contains evidence. In the event of disputes of facts on affidavits arises which cannot be resolved by the approach to resolve dispute in motion proceedings commonly referred to as the *Plascon-Evans* rule and the matter has to be referred to oral evidence, in such event the legal practitioner will have to become a witness. Such a scenario would be undesirable. It is further undesirable for a legal practitioner to align or associate him or herself with her client's cause. It is for those reasons that it is undesirable for a legal practitioner to depose to an affidavit on behalf of a client dealing with factual *issues*. A legal practitioner cannot astride two horses at the same time, namely be a witness and also a legal practitioner subject to ethical rules of conduct. In almost the similar situation like in *casu*, Masuku J<sup>2</sup> aptly put it as follows:

*"The conflict of your duty to the court on the one hand, and the personal attachment to the matter and the possibly adverse consequences make it a risky affair. It is akin to riding two horses at the same time. At the end, the rider is likely to fall off both of them and be injured or worse, be disfigured in the process."*

[17] Mr Namandje asks that the application be dismissed for the following reasons: the applicant should not be allowed to supplement and strengthen her case after the period of 120 days has expired otherwise she would be circumventing the mandatory provisions

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<sup>2</sup> I A Bell Equipment Co. Namibia (Pty) Ltd v ES Smith Concrete Industries CC (I 1860/2014) [2015] NAHCMD 68 (23 March 2015) par 35.

of section 53; that if the affidavits are allowed, the respondent would be deprived of their right to attack the applicant's case namely that she had failed to make out her case for the forfeiture order in her founding affidavit; and that the respondent would be prejudiced in that they have already filed their opposing affidavit in which they identified the material defects in the applicant's case.

[18] I do not agree with Mr Namandje's reasoning that allowing the confirmatory affidavits would amount to circumventing the provisions of section 53 of POCA. In my view the applicant is not strictly speaking introducing new evidence or new matters. The applicant is merely seeking leave to file affidavits to confirm the information which is already contained in the letters which were attached to the founding affidavit and which were available to Mr Namandje when he compiled the answering affidavit. It bears pointing out that it is not contended on behalf of the respondents that the reasons why the confirmatory affidavits were not filed earlier was due to *mala fides* or culpable remissness on the part of the applicant. These are two of the three factors stressed by the courts that a court that is considering allowing additional affidavits, has to take into account in addition to possible prejudice to be caused to the opposing party.

[19] Taking into account the legal principles outlined earlier in this judgment I take the view that the applicant has furnished a satisfactory and acceptable explanation why the affidavit could not be filed earlier. Furthermore, in my view, the delay was not caused by the *mala fide* or culpable remissness on the part of the applicant. The applicant endeavoured to obtain the affidavits from the relevant institutions but due to lack of co-operation and recalcitrant behaviour of the officials of the institutions concerned, she could not file the confirmatory affidavits at the time the forfeiture application was due for launching.

[20] The second reason advanced by Mr Namandje is that not only would the respondents be denied their right to attack the applicant's case, but it will also render the requirement of bringing a forfeiture application within 120 days after the date of publication of the preservation order nugatory. The attack is intended to be directed at what is referred to by Mr Namandje as 'inadmissible hearsay evidence' in the form of the letters by the officials attached to the founding affidavit. It is then contended that the respondent would be deprived of that opportunity if the confirmatory affidavits are allowed into evidence.

[21] In my view the overriding consideration here is the interests of justice. It has been held that highly technical objections should not be allowed to undermine or stand in the way of the interest of justice and to deprive the parties the opportunity to fully ventilate the real issues between the parties.<sup>3</sup> The affidavits seek to confirm a crucial issue for adjudication by the court at the forfeiture hearing namely whether the second respondent is indeed an appointed agent of Bank Windhoek as it is being claimed.

[22] In my considered view it would not be in the interest of justice to refuse leave to file confirmatory affidavits to confirm that fact. It would have been a different consideration altogether if the applicant was seeking to amend or retract factual admissions which are favorable to the respondents. I do not think one needs any authority for the well known proposition that litigation is not a game where if one party slipped up the other party would score a point or a victory. The object of all litigation is to arrive at the truth and at a fair and expeditious solution.<sup>4</sup> In the instant matter the applicant was not even culpable: she was confronted by insurmountable problems. On the one hand she had the approaching prescribed statutory deadline of 120 days and on the other hand she had uncooperative officials who refused to provide the requested information under oath. Courts are there to do real justice between parties and not to shield parties who want to take technical points

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<sup>3</sup> Stein Brother Ltd v Dawood and Another 1980 (3) SA 275 275.

<sup>4</sup> Stein Brother Ltd (supra)

which are not aimed at resolving real issues. I accordingly find that the point under consideration is not good in law and stands to be rejected.

[23] The third point raised on behalf of the respondents is that the respondents would be prejudiced in that they have already filed opposing affidavit in which they identified the material defects. As mentioned earlier in this judgment the defects referred to relate to the inadmissibility of the contents of the letters by the officials if the confirmatory affidavits are allowed into evidence. I have already expressed my view with regard to the court's responsibility to do justice between parties and that litigation is not a game. I continue to maintain that view in respect of this point too. I think it is fair to say that it is now well recognized and firmly established not to allow technical objections to less than perfect procedural aspects to interfere in the expeditious and inexpensive decisions of real issues<sup>5</sup> In my view the respondents would not suffer prejudice: they will only lose a tactical and technical point which has nothing to do with the overriding objective of the rules of this court, namely to facilitate the resolution of the real issues. It has been held that one of the requirements for allowing additional affidavits is that the court must be satisfied that no prejudice is caused to the opposite side which cannot be cured by an appropriate order of cost.<sup>6</sup> My conclusion on this point is that the respondent would not suffer real prejudice if the confirmatory affidavits are allowed into evidence.

[24] Apart from lamenting the fact that the respondents will suffer prejudice if the applicant's confirmatory affidavits are allowed into evidence the respondents have not intimated any intention to apply for leave to file affidavits to address whatever is contained in the confirmatory affidavits that would be prejudicial to their case, say for instance new matters. To the extent that the respondents may suffer prejudice as a result of this court granting leave to the applicant to file the confirmatory affidavits the court has deemed it

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<sup>5</sup> Shell Oil Swaziland (Pty) Ltd v Motor World (Pty) Ltd t/a Sir Motors (23/2006) SZSC 11 (21 June 2006); Trans-African Insurance CO Ltd v Maluleka 1956 SA (2) 273 (A) at 278G; and Nelson Mandela Metropolitan Municipality and Others v Greyvenouw CC (3263/02) [2003] ZAECHC 5 (21 February 2003), par 40.

<sup>6</sup>

fair and in the interests of justice to grant the respondent leave to file affidavits, if so advised, the contents of such affidavits to be confined solely to new the matters, if any, raised in the applicant's confirmatory affidavits.

[25] I proceed to consider a further ground by Mr. Namandje in addition to the three grounds considered above. Mr. Namandje submits further that his analysis of the law relating to filing of additional affidavits in applications, points to the fact that the court is only entitled to exercise its discretion if such additional affidavits are to be filed before the other party has replied to the original (founding) affidavit. He went on to say that this conclusion is clear from the statement by the Supreme Court of Namibia quoting from Cilliers *et al*/Herbstein & Van Winsen: The Civil Practice of the High Court of South Africa 5 ed Vol 1 434 where the court stated at para 95 as follows:

*"[95] On the assumption that its conclusion (that the amplified papers fell foul of the peremptory provisions of s 110) was wrong and that it had a discretion in law to allow the amplified papers as prayed for, the court proceeded to examine the evidence to assess whether it should exercise its discretion in favour of the appellants. It reminded itself that, in deciding whether or not to allow the amplified papers, it had to apply the principles evident from the following quotation:*

*'If a party to an application files and serves certain affidavits and files additional affidavits before the other party has replied to them because there was not enough time to complete all of the affidavits before a fixed time or because a new matter has been discovered or for any other good reason, a court will not reject the additional affidavits solely upon the basis of any alleged rule of practice against the filing of more than one set of affidavits. If there is an explanation that negatives mala fides or culpable remissness as the cause of the facts or information not being put before the court at an earlier stage, the court should incline towards allowing the affidavits to be filed. But there must be a proper and satisfactory explanation as to why it was not done earlier and, what is more important, the court must be satisfied that no prejudice is caused to the opposite party that cannot be remedied by an appropriate order as to costs.'*

[26] On the basis of the above quoted extract, Mr. Namandje submits that the respondents, as of right, were entitled to meet the applicant's case as set out in the founding affidavit and their right to attack the paucity of admissible evidence in the founding affidavit would be prejudicially affected and taken away should the applicant be allowed to file supplementary affidavit. He therefore submits that it is impermissible to supplement a founding affidavit after the answering affidavit had already been filed.

[27] It needs pointing out that the statement quoted above was not made by the Supreme Court as mentioned by Mr. Namandje: it was made by the court *a quo* and quoted by the Supreme Court when considering a ground of appeal by the appellant relating to the court's *a quo* refusal of the appellants' application for leave to supplement their papers. The appellants criticised the court *a quo* that it had failed to take into account 'overriding factors': namely

*"the fact that there was insufficient time for the appellants to complete all their affidavits before expiry of the 30-day period; the fact that new matter had been discovered subsequent to the institution of the election application; the existence of an explanation which negatives mala fides or culpable remissness on the part of the appellants pertaining to the reason these facts or information could not have been put before the court at an earlier stage; the fact that permission to amplify in essence deals with a question of fairness to both sides and the fact that the respondent did not suffer any prejudice"*.

[28] The Supreme Court concluded, at par 104, that the court *a quo* did consider most, if not all the factors which the appellants claimed should have informed its decision. The Supreme Court further pointed out that not only did the court *a quo* quote the extract from Herbstein & Van Winsen, but in its concluding remarks on the admissibility of the amplifying papers, by implication referred to the approach advanced therein; that the court *a quo* assumed that it should not reject additional affidavits solely upon the basis of the alleged rule of practice against the filing of more than one set of affidavits; that the

appellants' explanation negatives *mala fides* or culpable remissness and that the respondents were not prejudiced. The Supreme Court finally concluded that the court *a quo* had specific regard to factors which, according to the authorities, should inform its decision in an application to supplement papers.

[29] On the careful reading of the Supreme Court's judgment in the matter of *Rally for Democracy* this court did not arrive at the conclusion contended for by Mr. Namandje. As a matter of fact the very extract from Herbsein & Van Winsen referred to, clearly states that '*a court will not reject the additional affidavits solely upon the basis of any rule of practice against filing of more than one set of affidavits*'. Furthermore the Supreme Court specifically found that not only did the court *a quo* quote the extract from Herbstein & Van Winsen but it applied the approach advanced therein by having had regard to the factors such as the applicant's explanation which negatives *mala fides* or culpable remissness and that the respondent would not be prejudiced.

[30] There is no rule or principle of law that says that a court is only entitled to exercise its discretion if additional affidavits are to be filed before the other party has replied. The research of South African judgments on this point reveals that it is now well established that the courts will allow the applicant to clarify or rectify issues in a replying affidavit. In the matter of *Shepard v Tuckers Land Development Corporation (Pty) Ltd*<sup>7</sup> the court was considering the requirement that the applicant is obliged to include all his pertinent facts in his founding affidavit on which he relies for his case. The court expressed itself on that matter as follows:

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<sup>7</sup> 1978 (1) Sa 173 (W) at 177G -178A

*“This is not, however, an absolute rule. It is not a law of Medes and Persians: The court has a discretion to allow new matter to remain in replying affidavits giving the respondent the opportunity to deal with it in a set of answering affidavits.”*

[31] The South African Supreme Court of Appeal in the matter of *Smith v Kwanouqubela Town Council*<sup>8</sup> held that a party to litigation does not have the right to prevent the other party from rectifying a procedural defect. In my view the approach commends itself as the correct one and well established in South Africa. Given the fact that in this jurisdiction litigation is now court controlled, the approach by the South African courts, to the extent it has not already been adopted in this jurisdiction, should be adopted by this court because it commends itself to common sense.

[32] Taking all the relevant factors into account I am satisfied that the applicant has made out a case upon which this court may exercise its discretion in granting the applicant the relief prayed for in the notice of motion namely granting the applicant leave to file confirmatory affidavits.

### Costs

[33] I am of the view that it cannot be said that the respondents' opposition to the application was unreasonable. The fact that they did not succeed to persuade the court not to grant the order should not count against them. I cannot see any reason why the applicant should not be ordered to pay the respondents' costs in respect of any inconvenience or prejudice (other than the alleged prejudice rejected by the court) they might have suffered as a result of opposition of this application.

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<sup>8</sup> 1999 (4) SA 947 (SCA)

[34] In the result I make the following order:

1. The application is granted.
2. To the extent that the respondents may suffer prejudice as a result of this court granting leave to the applicant to file the confirmatory affidavits the respondents are granted leave to file affidavits, if so advised, the contents of such affidavits to be confined solely to new the matters, if any, raised in the applicant's confirmatory affidavits.
3. The applicant is ordered to pay the respondents costs.

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H Angula  
Deputy Judge President

**APPEARANCES**

APPLICANT:

**Mr Boonzaier**

Office of Government Attorney

RESPONDENTS:

**Mr. Namandje**

Sisa Namandje & Co.