



'Unreportable'

CASE NO.: A 237/2011

IN THE HIGH COURT OF NAMIBIA

In the matter between:

**AUGUST MALETZKY
EDWARD JEFFREY PLATT**

**First Applicant
Second Applicant**

and

**MARKET MOTORS CC
SANTAM NAMIBIA
DEPUTY-SHERIFF OF THE HIGH COURT**

**First Respondent
Second Respondent
Third Respondent**

***CORAM:* PARKER J**

Heard on: 2012 July 18

Delivered on: 2012 July 18 (ex tempore)

Delivered on: 2012 July 25 (reasons)

JUDGMENT

PARKER J: [1] In this matter the applicants brought application by notice of motion and prayed for the orders appearing in the notice of motion. The first respondent moved to reject the application. I take it that the second and third respondents will abide by the decision of the Court: they have not answered to the

application. There being no appearance for the applicants at the hearing of the application, as explained in some detail *infra*, Dr Akweenda, counsel for the first respondent, submitted that in the circumstances the application should be dismissed with costs. I accepted counsel's submission and dismissed the application with costs, and I added then that reasons therefor would follow in due course. The following are the reasons.

[2] On 26 January 2012, upon the appearance of Ms Rix, counsel for the first respondent, and there being no appearance for the applicants, by themselves or by counsel, the Court made an order thus:

The parties and the legal representatives (if applicable) must attend status hearing in open court at 09h00 on 1 March 2012, and in that behalf their attention is drawn to rule 37(16) of the Rules.

On 1 March 2012, the following occurred. Upon the appearance of Mr Maletzky, the first applicant in person, Mr Platt, the second applicant in person and Ms Rix the Court issued the following order in terms of rule 6 (5C):

- (1) The parties and the legal representatives (if any) must hold at 09h00 on 20 March 2012 in the Chambers of Adv. Akweenda a case management meeting for the purpose of preparing a case management report in terms of rule 6 (5A)(b) of the Rules and must on or before 15 March 2012 submit to the managing judge a report pursuant to rule 6(5A)(c), read with (d) thereof, of the Rules.
- (2) The parties and the legal representatives (if any) must attend case management conference in open court at 09h00 on 5 April 2012.
- (3) The attention of the legal representatives (if any) is drawn to rule 37(14) and (16) of the Rules.

Thereafter, on 5 April 2012 the following occurred. Upon the appearance of Mr Maletzky, the first applicant in person, and Mr Platt, the second applicant in person, and Adv. Akweenda, for the first respondent, and having had regard to the parties' joint case management report, and having had further regard to the fact that the issues were straightforward, the Court issued the following order in terms of rule 6(5B):

- (1) The respondents' legal representatives and the applicants must file heads of argument in accordance with the Consolidated Practice Directions.
- (2) Set down hearing date: 18 July 2012 at 09h00.

Then at the commencement of the present hearing and as an indulgence to the applicants, I caused the Court orderly to announce the names of the applicants through the corridors up to the Main Gate of the Court, as is the usual practice, to call them to the hearing. There was no response from any of them.

[3] I have sketched the foregoing for a purpose and good reason. It is to demonstrate irrefragably that by their conduct the applicants evinced a clear and unmistakable intention, without any explanation, not to move their application for which they had dragged the respondents to court. It is the applicants' application, and they refused or failed to appear in order to move it. In such a situation I do not find any good reason why the train of justice should wait for the applicants to board at their whims and caprices and convenience (*Hendrik Christian t/a Hope Financial Services and Others v LorentzAngula Inc and Others* Case No. A 244/2007 (Judgment delivered on 22 March 2012) (Unreported)); and what is more, I do not see any good reason why rule 40(3) of the rules which applies to

actions should not apply with modifications by context to applications, and, furthermore, I also invoke rule 37(16) of the Rules. Having taken into account all these considerations, the only reasonable and fair order to make was, therefore, as Dr Akweenda submitted, to dismiss the application with costs; and such costs were to include costs occasioned by the first respondent's employment of one instructed counsel and one instructing counsel.

PARKER J

ON BEHALF OF THE APPLICANTS:

No Appearance

COUNSEL ON BEHALF OF THE FIRST RESPONDENT:

Adv. Dr. S Akweenda

Instructed by:

Rix & Co.

**ON BEHALF OF THE SECOND AND
THIRD RESPONDENTS:**

No Appearance