



NOT REPORTABLE

CASE NO.: SCR 6/2024

IN THE SUPREME COURT OF NAMIBIA

In the matter between:

WALVIS BAY PLANT AND TOOL HIRE CC

Applicant

And

NAMIBIA DRYDOCK AND SHIP REPAIR (PTY) LTD

Respondent

Coram: DAMASEB DCJ

Heard: IN CHAMBERS

Delivered: 26 June 2025

Summary: This matter concerns a review application initiated by the applicant following an interlocutory ruling of the High Court, which dismissed its objection to an application by the respondent to amplify a witness statement. Pursuant to procedural directions, the respondent later raised concern over the applicant's failure to properly amend the citation of the parties. The respondent requested directions from the court to dismiss the review and resume the High Court proceedings. Before the court could rule on this request, the respondent notified the Registrar of the death of the witness, rendering the review moot. The respondent sought to withdraw the review, but the applicant opposed this, seeking a ruling on the interpretation of Rule 92 of the High Court Rules.

Held, that the Supreme Court's jurisdiction under s 16 was invoked on the premise that a ruling would have practical legal consequences in the pending High Court proceedings. Due to the witness's death and the inapplicability of his evidence, the review no longer held practical value and thus the court revoked its invocation of jurisdiction under s 16, and ordered that the proceedings in the High Court resume without further delay.

JUDGMENT IN TERMS OF S 16 OF ACT 15 OF 1990

DAMASEB DCJ:

Introduction

[1] This matter arises from a request for directions submitted by the respondent, Namibia Drydock and Ship Repair (Pty) Ltd (Namibia Drydock). The request for directions has since been opposed by the applicant, Walvis Bay Plant and Tool Hire CC (Walvis Bay Plant).

[2] The request was filed pursuant to an intended review application arising from an order granted by the High Court on 4 September 2024, in which that court, in interlocutory proceedings, dismissed an application seeking leave to amplify a witness statement.

Factual Background

[3] In the course of the trial proceedings before the High Court, Namibia Drydock, brought an interlocutory application. Significantly, this application was not filed at the commencement of the trial but was instead introduced during the presentation of the evidence-in-chief of Mr Willem Petrus Esterhuyse. Mr Esterhuyse had previously

filed a witness statement which had been admitted into evidence as his evidence-in-chief.

[4] At para 28 of Mr Esterhuyse's witness statement, reference was made to invoices and documents allegedly supporting the quantum of the amounts claimed by Namibia Drydock. Counsel for Walvis Bay Plant, Mr Olivier, raised an objection to the reliance on these documents, arguing that they constituted inadmissible copies. This objection was overruled by the court. A further objection was raised by Mr Olivier on the basis that the invoices and documents relied upon had not been expressly identified in the witness statement. This second objection was upheld by the court in an *ex tempore* ruling.

[5] It was against this backdrop that the interlocutory application was launched by Namibia Drydock, seeking to amplify Mr Esterhuyse's witness statement by incorporating explicit references to the supporting invoices. This application, however, was met with objection from Walvis Bay Plant.

[6] In adjudicating the matter, the High Court¹ held as follows:

'It is undisputed and indisputable that the supporting invoices and documents have been discovered. They are not "new matters", within the meaning of rule 93(3). Therefore, *pace* Mr Olivier, the requirements of rule 93(3) will not apply to the present situation, because what Esterhuyse wishes to do is to make references to the discovered invoices and documents in his witness statement. They are discovered documents that have been in the sight and knowledge of the defendant during the judicial case management (JCM) process; and a *fortiori*, they form part of the *res gestae* of admissible facts in Esterhuyse's witness statement.'

¹ *Namibia Drydock and Ship Repair (Pty) Ltd v Walvis Bay Plant and Tool Hire CC* (HC-MD-CIV-ACT-CON-2022/02286) [2024] NAHCMD 504 (4 September 2024) para 11.

[7] Dissatisfied with the ruling of the court a quo, Walvis Bay Plant sought to invoke the review jurisdiction of the Supreme Court in respect of the matter.

[8] On 15 November 2024, this Court invoked its review jurisdiction in terms of s 16 of the Supreme Court Act 15 of 1990. Pursuant to the invocation of its jurisdiction, the court issued procedural directions governing the conduct of the review proceedings. The parties complied with these directives and filed their respective papers in accordance with the prescribed timelines.

[9] Subsequently, and in response to a correspondence dated 18 November 2024 from counsel for Namibia Drydock, Walvis Bay Plant was, on 21 November 2024, directed by the court to submit revised and corrected documents, accurately reflecting the proper citation of the parties.

Request for directions

[10] Namibia Drydock filed a request for directions dated 31 January 2025 with regards to Walvis Bay Plant's failure to comply with the court's directive to correct the citation of the parties. It is Namibia Drydock's contention that Walvis Bay Plant's failure to amend its review application, notwithstanding two separate directives issued by this Court, constitutes a material failure to prosecute the review application.

[11] Furthermore, they note that the review application has not been pursued within a reasonable time, and such inaction has caused undue delay in the finalisation of the matter in the High Court. It is their prayer that:

'13.1 That this Honourable Court issue directions regarding the appropriate procedure to be followed for the dismissal of the review application on account of the applicant's failure to prosecute the matter; and

13.2 That this Honourable Court issue an order directing that the proceedings before the High Court resume and proceed to finality without further delay.'

[12] Prior to the court having the opportunity to consider the request for directions – Walvis Bay Plant filed the review record on 20 February 2025 reflecting the correct citation of the parties, furthermore, a letter was received from Namibia Drydock, addressed to this Court's Registrar, notifying the court of the passing of Mr Esterhuyse – whose witness statement forms the central issue in the review proceedings. In light of this development, Namibia Drydock seeks to have the matter withdrawn. However, Walvis Bay Plant opposes the proposed withdrawal and requests that the court pronounce itself on the interpretation of Rule 92 of the Rules of the High Court.

Disposal

[13] As the designated Judge, I now turn to consider the issues before me.

[14] This Court's discretionary power under s 16 was invoked at the time and in circumstances where, if the applicant's review succeeded, it would have had a practical effect on the pending proceedings. Success would have meant that the court a quo's interlocutory order allowing amplification of Mr Esterhuyse's witness statement would have been set aside.

[15] It has since transpired that the witness in question has passed away. The proceedings were halted at a point where he was being led in-chief and had not yet been cross-examined. The passing of the witness has the effect that his evidence is no longer relevant in the pending proceedings – in the absence of cross-examination (a right inherent under Art 12 of the Namibian Constitution). The applicant has been given notice by the respondent that the matter has become moot but is insisting on pursuing the review as, according to it, it will be beneficial to litigants in the future that this Court authoritatively interpret Rule 92. The role of the courts is to resolve concrete disputes – not give advisory opinions.

[16] This Court enjoys the inherent jurisdiction to determine its own procedure. That power of necessity includes a discretion to revoke its invocation of s 16 when the reason for the exercise for that discretion has fallen away.

Costs

[17] The issue of costs does not arise, as it was neither raised nor specifically sought by the parties in the application.

Order

[18] In the result, the following order is made:

1. The invocation of the court's jurisdiction in terms of s 16 of the Supreme Court Act on 15 November 2024 is hereby revoked.

2. It is directed that the pending proceedings in the High Court resume and proceed to finality without further delay.

DAMASEB DCJ

APPEARANCES:

APPLICANT:

J H Olivier

of Du Pisani Legal Practitioners of

RESPONDENT:

G Paulse

of ENS|Namibia (Incorporated as
LorentzAngula Inc.)