

NOT REPORTABLE

CASE NO.: I 1190/2007

IN THE HIGH COURT OF NAMIBIA
In the matter between:

GERHARDTO DEMONO AWARAB

PLAINTIFF

and

**CHRISTINE HARASES
MAGDALENA XOAGUS**

**DEFENDANT
THIRD PARTY**

CORAM: HOFF, J
Heard on: 20 October 2010
Delivered on: 21 October 2010

JUDGMENT

HOFF, J: [1] This is a point in *limine* raised by counsel Mr Grobler appearing on behalf of the Plaintiff. The point in *limine* is to the following effect.

[2] The Plaintiff alleges there is no valid sales agreement between the Defendant and the third party and the alleged agreement is null and void for non-compliance with the requirements of the Alienation of Land Act. Section 1 of the Formalities in respect of contract of sale of land Act No. 71 of 1969 reads as follows:

"No contract of sale of any interest in land (other than a lease, main pact, or mining claim or stand shall be of any force or fact if concluded after commencement of this Act unless it is reduced to writing and signed by the parties thereto or their agents acting on their written authority".

[3] It was submitted by Mr Grobler that the documents filed by the

defendant in support of a counter claim and a plea do not comply with the requirements of the formalities referred to. In particular it was submitted that the parties to the contract has not clearly been identified. The description of the property is inadequate and there is also not a clear indication of what the price was.

In addition to this it was submitted that both parties, that is the plaintiff and the defendant, being the purchaser and the seller did not sign the documents the defendant tried to rely on.

[4] It must be said at this stage that Ms Kanalelo who appears on behalf of the third party, in essence supported the submissions of Mr Grobler. Mr Nakamhela appearing on behalf of the defendant submitted that the defendant in her papers filed relied on a donation and that the criticism raised by Mr Grobler in respect of the deed of sale does not apply in respect of the donation.

[5] Now I have perused the documents filed and as was submitted by Mr Grobler it is clear from the papers that the defendant never relied on such a donation. It is clear from the papers that defendant's case was that there was a sales agreement and it is on this basis that the parties approached the Court and the matter was set down.

[6] It is clear to me that there is much merit in the submissions advanced by Mr Grobler. The documents filed by the defendant in support of a counter claim and plea do not comply with the requirements referred to earlier. In the result it is clear to me that there was no valid sales agreement between

the defendant and the third party. Accordingly the plea and counter claim of the defendant is dismissed with costs.

[7] Furthermore, this Court gives a Judgment in favour of the Plaintiff in terms of the Particulars of Claim namely:

(a) The ejectment of the Defendant from the said Erf 4050 Katutura, Extension 2, Windhoek Republic of Namibia.

(b) Delivery of the same Erf to the Plaintiff.

(c) Payment in the amount of three thousand Namibian Dollars (N\$3 000.00) in respect of defendant's unlawful occupation on the premises from the months February 2007 and March 2007.

(d) Payment in the amount of one thousand five hundred Namibian Dollars (N\$1 500.00) per month, until and including the month during which the defendant is ejected from the premises.

HOFF, J

ON BEHALF OF THE PLAINTIFF:

Instructed by:

MR GROBLER

GROBLER & CO.

ON BEHALF OF THE DEFENDANT:

Instructed by:

MR NAKAMHELA

UDA NAKAMHELA ATTORNEYS

ON BEHALF OF THE THIRD PARTY: MRS KANGUEEHI-KANALELO

Instructed by:

SHIKONGO LAW CHAMBERS