



HIGH COURT OF NAMIBIA MAIN DIVISION, WINDHOEK

JUDGMENT

Case no: I 3965/2011

In the matter between:

BENJAMIN NDEVAFA NGHIDINWA

PLAINTIFF

and

THOMAS SHIINDI

DEFENDANT

Neutral citation: *Nghidinwa v Shiindi* (I 3965/2011) [2012] NAHCMD 85 (27 November 2012)

Coram: PARKER AJ

Heard: 27 November 2012

Delivered: 27 November 2012

Flynote: Contract – For sale of goods – Plaintiff alleges defendant's breach of oral contract resulting in plaintiff's suffering damages in the amount of N\$101 000.

Flynote: Practice – Trial – Plaintiff not appearing in person or by counsel – Court applying rule 40(3) of the rules of court.

Summary: Contract – for sale of goods – Breach – Plaintiff alleging defendant's breach of oral contract for sale of goods – Claim for amount paid to and received by defendant – Defendant claiming no contract between him and plaintiff was concluded.

Summary: Trial – Rule 40(3) of the rules of court – Application of – Court satisfied that plaintiff was served with all relevant process and documents, including set down trial date – Court applying rule 40(3) – Counsel for defendant led evidence and satisfied the court that final judgment be granted in the defendant’s favour – Court having being so satisfied dismissed plaintiff’s claim with costs.

ORDER

The plaintiff’s claim is dismissed with costs.

JUDGMENT

PARKER AJ:

[1] The plaintiff’s claim is for damages suffered in the amount of N\$101 000 for breach of oral contract of sale of goods, to wit, bottles of whisky. In his plea and the summary of his evidence, the defendant denies he entered into any oral contract to supply the bottles of whisky to the plaintiff.

[2] In the course of events the plaintiff’s legal representatives filed a notice of withdrawal as the plaintiff’s legal representatives of record. I am satisfied that subsequent to the withdrawal, all necessary court papers, including the set down date, were served by registered post on the plaintiff at his last known postal address.

[3] At the commencement of trial the plaintiff was called and did not appear in person or by counsel. Thereafter, as is the practice of the court, his name was called many times by the court orderly through the corridors of the court, but there was no response. That being the case, Ms Sikongo, counsel for the defendant, requested the court to deal with the matter in terms of rule 40(3) of the rules of court. She

chose to lead evidence with the view to satisfying the court that final judgment should be granted in the defendant's favour.

[4] In this regard, counsel led evidence along the lines set out in the defendant's brief summary of evidence filed with the court in terms of rule 37(11)(c)(iv) of the rules of court. From the evidence I am satisfied that the defendant has established that no contract for the sale of goods, to wit, bottles of whisky – oral or written – was concluded between the plaintiff and the defendant. That being the case the plaintiff's claim must fail. Whereupon, I make the following order:

The plaintiff's claim is dismissed with costs.

C Parker
Acting Judge

APPEARANCES

PLAINTIFF: No appearance

DEFENDANT: N Sikongo
Of Nambahu & Uanivi Attorneys, Windhoek