



CASE NO.: I 2377/2007

IN THE HIGH COURT OF NAMIBIA

In the matter between:

TRAILER SPARES AND REPAIRS CC

PLAINTIFF

10 and

NAMIB CONTRACT HAULAGE

DEFENDANT

CORUM: MILLER, AJ

Heard on: 01 March 2012

Delivered on: 01 March 2012

JUDGMENT (*Ex-Tempora*):

20 **MILLER, AJ:** [1] In this matter the Plaintiff by way of action seeks payment from the defendant, in the amount of six hundred and twenty eight thousand five hundred Namibian Dollars and sixty five cents (N\$628 500.65) together with interest on that amount, from the date of summons to the date of payment. The

defendant in its pleadings denies that it is liable to pay that amount to the plaintiff.

[2] The plaintiff's case arises from an agreement which was concluded between the parties some time ago and in terms whereof the plaintiff undertook to effect certain repairs to the defendant's fleet of busses and vehicles.

[3] According to Mr Blaauw, who negotiated the agreement on the part of the plaintiff and it is supported by the evidence of Mr. van Standen who was the
10 owner of the plaintiff's business, certain rates were agreed upon on an hourly basis and there was provision made in the agreement for interest, dates for payment, extension for dates of payment and for standing fees in respect of the vehicles.

[4] The issues to be decided are entirely issues of facts and are to be found solely in the evidence tendered on behalf of the plaintiff since the defendant closed its case without adducing any evidence.

[5] In the main, the attitude adopted by the defendant appears to be that it itself
20 is uncertain of the amounts, if any, that is owed to the plaintiff and during the cross-examination of the plaintiff's witnesses, little more was done other than sniping at the factual allegations made by the plaintiff's witnesses in order to submit at the end of the day that the plaintiff had not succeeded in establishing the amount owed to it on a balance of probabilities.

[6] By and large, the factual allegations are to be found in the evidence of Mr. van Standen and to some extent these allegations are, in some respect or another, supported and corroborated by the other witnesses called.

[7] By way of summary, Mr. van Standen confirms the existence of the agreement and further alleges that he had agreed to repair the vehicles of the defendant at an hourly rate of Two hundred Namibian Dollars (N\$200-00) per hour and that in respect of standing fees, a fee of Forty-five Namibian Dollars (N\$45-00) per day would be levied. As far as towing and call-out charges were
10 concerned, he testifies that these were agreed at Twelve Namibian Dollars and fifty cents (N\$12-50) per kilometre for towing and Four Namibian Dollars fifty cents (N\$ 4-50) per hour in respect of call-outs to attend to vehicles which had broken down along the road side.

[8] He testifies that in respect of each particular piece of work, a job card was opened and adjusted where necessary. A quotation was then prepared and provided to the defendant and upon the approval of the quotation by the defendant, the work would proceed. Once the work had been completed, so he testifies, the job card would be given to somebody in his office who would then
20 print out an invoice in respect of each particular piece of work. These invoices were then delivered on a monthly basis to the defendant, either at its office in Oshakati or they would be posted to the defendant's address.

[9] His testimony is further to the effect that once payment was not forthcoming, he instructed his legal practitioners, to institute action against the defendant and provided them with the originals of all the documents upon which the claim was

then based. It appears common cause between the parties that for some reason or another, the instruction was not immediately attended to by the plaintiff's legal practitioners and to add to the plaintiff's woes, the supporting documents all became irretrievably lost.

[10] The plaintiff's evidence is further to the effect that upon discovering that the original documents had been lost, he was able to retrieve copies thereof which had been stored on a computer at his office. The invoices upon which he relies in support of his claim were produced and accepted in evidence.

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[11] Mr. Mostert who appears for the defendant in the cross-examination of, during the course of the cross-examination of Mr Blaauw, pointed to the fact that there were in existence amongst the discovered documents, other documents which do not correspond with the documents the plaintiff seeks to rely upon. Mr. Blaauw was called upon to explain the discrepancies if he could and he was able to do so.

[12] In each instance where a discrepancy was pointed out to him, Mr Blaauw was able to provide an explanation in the manner which strikes me as
20 satisfactory. As far as Mr Blaauw is concerned, he appeared to me to be a reliable and honest witness. His testimony was frank and probable. Added to that is the fact there is nothing to gainsay his evidence. To that I add the fact that material parts of his evidence was corroborated by other witnesses.

[13] It will follow from this synopsis that practically the only issue in dispute is whether the invoices produced by Mr. Blaauw and upon which he relies for his

claim are reliable and can be accepted as support of the fact that the work reflected therein and the standing charges and so forth, had in fact been done. I have no reason not to accept the evidence of Mr. Blaauw in all its material respects.

[14] In as much as the defendant attempted to cast doubt on the veracity and reliability of the evidence of Mr Blaauw, such efforts to my mind, fail completely.

[15] It follows in the circumstances that the plaintiff is entitled to judgment in his
10 favour.

[16] I therefore grant judgment in favour of the plaintiff in the amount of six hundred and twenty eight thousand five hundred Namibian Dollars and sixty five cents (N\$628 500-65) together with interest thereon at the rate of 20% per annum, such interest to run from the date of summons to date of final payment.

[17] The defendant is ordered to pay the plaintiff's costs. Such costs will include the costs of one instructing and one instructed counsel.

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MILLER, AJ

ON BEHALF OF THE PLAINTIFF

Instructed by:

Mr. van vuuren

Kirsten & Company

ON BEHALF OF THE DEFENDANT

Instructed by:

Mr. Mostert

Krüger, van Vuuren, & Co.