

REPUBLIC OF NAMIBIA



HIGH COURT OF NAMIBIA MAIN DIVISION, WINDHOEK

JUDGMENT

Case no: I 1704/2009

In the matter between:

HARRALD GUNNAR VOIGTS
PLAINTIFF

and

SITTA ELKE VOIGTS
DEFENDANT
(Born WALDSCHMIDT)

Neutral citation: *Voigts v Voigts* (I 1704/2009) [2012] NAHCMD 38(12 October 2012)

Coram: Damaseb JP
Heard on: 12 October 2012
Delivered on: 12 October 2012 [ex tempore]

Summary: Practice – Plaintiff seeking dismissal of defendant’s defence and counterclaim on account of defendant’s failure to provide further particulars to defendant’s counterclaim within the time directed by the court – Defendant having previously failed to comply with court orders and being mulcted in costs previously.

Practice – Court holding that before considering dismissal of defendant’s whole case, it must consider less drastic alternatives to dismissal of entire case of defendant – Court opting to dismiss only the defendant’s counterclaim which was

granted as an indulgence as it was out of time – Court explaining that although non-compliance was attributable to defendant’s legal representatives, point was reached beyond which she could no longer hide behind remissness of her legal representatives.

ORDER

1. The defendant’s counter-claim is hereby dismissed with costs, and the defendant shall be allowed to defend the plaintiff’s claim on the basis of the pleadings as they stood before the court granted her leave to file a counter-claim against the plaintiff.
 2. Costs are awarded to the plaintiff against the defendant on the scale as between attorney and own client, including the costs of instructed counsel.
 3. The parties are directed to meet no later than 20 days from the date of this order for the purpose of agreeing a joint report for submission to the managing judge, for further directions on the future conduct of the litigation in light of the dismissal of the defendant’s counter-claim.
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JUDGMENT

DAMASEB JP:

[1] I am indebted to both counsel for their submissions. The record of today’s proceedings speak for themselves; and I do not wish to repeat what has been said in exchange between the court and the bar.

[2] This matter has a history of non-compliance with the orders of this court on the part of those acting on behalf of the defendant. My previous judgments speak to that and I also wish to reiterate what I said in those judgments. It is no exaggeration

that almost every order made by this court has in some form or another not been complied with by the legal representatives of the defendant.

[3] There is a public interest in the speedy finalisation of court proceedings, although it appears – based on what counsel has said to me on behalf of the defendant – the non-compliance is not directly attributable to the defendant personally.

[4] We have now reached a point beyond which the defendant cannot hide behind the remissness of her legal representatives. My last order was made against the backdrop of what was a series of non-compliance of court orders by the defendant; and it was clear in that order that I wanted this matter to move speedily after my order.

[5] I had granted an indulgence to the defendant to file a counter claim and gave very clear beacons as to what was to happen next. Further particulars were requested but not provided – and the record of today's proceedings shows they have not been provided – as conceded to by counsel for the defendant.

[6] Mr Strydom has raised a point that the particulars sought were in any event not of the nature that the plaintiff was not entitled thereto. The point remains however that there was no legal objection to the request raised by the defendant in any form up to the point of the hearing of this matter – not even a notice was filed to point out that the particulars were not necessary and that the plaintiff was not entitled thereto.

[7] It has been pointed out by the plaintiff's counsel from the bar, and I have no reason to disbelieve, that in a letter dated 18 September 2012, the defendant's counsel of record was reminded to provide the particulars, but they have not. This is a clear disregard of the authority of the court and seriously undermines the

administration of justice. There must come a point in any litigation where the court must stamp its authority.

[8] I have considered the application by the plaintiff – which urges me to dismiss the plea and counter claim, with costs. I have pointed out to plaintiff's counsel that I have to first consider less drastic measures than dismissal, if justified in the circumstances in order to achieve justice. Mr Corbett, for the plaintiff, has conceded that considering that the request related to the counter claim, if the court proceeded in that way, justice could still be achieved; and that is the route that I choose to adopt.

[9] For all of the above reasons, the defendant's counter claim filed in the wake of the indulgence granted in my last judgment is dismissed; with costs – on the scale as between attorney and own client to mark my disapproval of the conduct of the defendant's legal representatives; and I also grant costs in plaintiff's favour for today's proceedings.

CASE MANAGEMENT ORDER

[10] To give effect to the request made by Mr Strydom, I direct the parties to have a parties conference within 20 days from the date of this order to prepare a joint report for submission to the court. I say 20 days because I myself am going to leave the country immediately and am back only on the 26th of October, I have case management on the 30th October 2012. I hope within 20 days the parties would have prepared a report so that I can consider that and give trial dates in the first term of 2013 for this matter to be finalised.

[11] The effect of my order, as I had indicated in oral argument, is that the case will now proceed based on the pleadings as they stood before my judgment to which this matter relates.

[12] I therefore make the following orders:

- (a) The defendant's counter-claim is hereby dismissed with costs, and the defendant shall be allowed to defend the plaintiff's claim on the basis of the pleadings as they stood before the court granted her leave to file a counter-claim against the plaintiff.
- (b) Costs are awarded to the plaintiff against the defendant on the scale as between attorney and own client, including the costs of instructed counsel.
- (c) The parties are directed to meet no later than 20 days from the date of this order for the purpose of agreeing a joint report for submission to the managing judge, for further directions on the future conduct of the litigation in light of the dismissal of the defendant's counter-claim.

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P T DAMASEB
Judge-President

APPEARANCES

PLAINTIFF:

A Corbett

Instructed by Behrens & Pfeiffer, Windhoek

DEFENDANT:

A Strydom

Instructed by Theunissen, Louw & Partners,
Windhoek