

REPUBLIC OF NAMIBIA



HIGH COURT OF NAMIBIA MAIN DIVISION, WINDHOEK

JUDGMENT

Case no: I 179/2010(B)

In the matter between:

THE 6000 LIQUOR CC

PLAINTIFF

and

WINDHOEK TRUCK AND BAKKIE CC

DEFENDANT

Neutral citation: *The 6000 Liquor CC v Windhoek Truck and Bakkie CC* (I179/2010(B)) [2013] NAHCMD 274 (4 October 2013)

Coram: UEITELE J

Heard: 13 February 2013

Delivered: 13 February 2013

Reasons: 4 October 2013

Flynote: Practice- case management conference scheduled in terms of Rule 37(3) of this Court's rules-court order not complied with-no explanation advanced for non-compliance-sanctions in terms of Rule 37 (16) imposed-absolution from the instance granted.

Summary: By summons dated 15 January 2010, the plaintiff instituted action against the defendant in terms of which it claimed an amount of N\$35 000 from the defendant.

The matter was after the filing of the plea placed on the Case Management Roll. The matter was called for the first time before the Honourable Court on 25 July 2012. On that day both the plaintiff and the defendant did not turn up for the case management conference schedule in terms of Rule 37(3) of this Court's rules. The matter was subsequently postponed to the 3rd of October 2012; and again to the 28th November 2012 (for the parties to file a case management report as contemplated in Rule 37(5) of this Court's rules), on the occasion of 28 November 2012 no case management conference report was filed. The matter was again postponed to 13 February 2013 (for the plaintiff to file a status report), on that occasion of 13 February 2013 there was no explanation advanced as to why the status report was not filed.

Held that in the light of the fact that, the summons were issued in January 2010 and the last pleading on the court file is a Notice in terms of Rule 35 dated 29 November 2010, the court granted an order for absolution from the instance.

ORDER

Absolution from the instance is granted.

JUDGMENT

UEITELE, J

[1] On 13 February 2013 I made an order granting absolution from the instance in this matter. When I made the order I indicated that a party who wants reasons for the order I made, must request the reasons in writing. The

legal practitioners representing the plaintiff have now requested reasons for the order I made on 13 February 2013. The reasons follow in the following paragraphs.

[2] By summons dated 15 January 2010, the plaintiff instituted action against the defendant in terms of which it claimed an amount of N\$35 000 from the defendant.

[3] The matter was after the filing of the plea placed on my Case Management Roll. The matter was called for the first time before me on 25 July 2012. On that day both the plaintiff and the defendant did not turn up for the case management conference scheduled in terms of Rule 37(3) of this Court's rules. I nonetheless postponed the matter to the 3rd of October 2012 with an order that the Deputy Sheriff must serve the Court Order of 25 July 2012 on the parties.

[4] When the matter was called again on 3 October 2012, I was informed that the deputy sheriff has not served the order on the parties. I consequently postponed the matter to 28 November 2012 for the parties to file a case management report as contemplated in Rule 37(5) of this court's rules. When the matter was called again on 28 November 2012, no case management conference report was filed. On 28 November only the plaintiff's legal practitioner appeared, I accordingly again postponed the matter to 13 February 2013 for the plaintiff to file a status report. On this occasion (i.e. on 28 November 2012) I made an order that the plaintiff must file a status report.

[5] On 13 February 2013, when the matter was called both the plaintiff and the defendant or their legal practitioners were not in court. I must pause here and say that, although the plaintiff or his legal practitioners of record were not in court, Mr Ray Rukoro of the firm LorentzAngula Inc was in court and indicated to me that he was standing in for the legal practitioners of the plaintiff.

[6] Mr Rukoro, however informed me that he had no instructions other than to stand in for his colleagues of Dr Weder, Kauta & Hoveka Inc. He informed me that he had no instructions as to why the status report was not filed or how

to move the matter forward. After Mr Rukoro placed that information before me and in the light of the fact that, the summons were issued in January 2010 and the last pleading on the court file is a Notice in terms of Rule 35 dated 29 November 2010 , I granted an order for absolution from the instance.

SFI Ueitele
Judge

APPEARANCES

PLAINTIFF:

R Rukoro

Dr Weder, Kauta & Hoveka Inc

DEFENDANT: