

NOT REPORTABLE

REPUBLIC OF NAMIBIA



HIGH COURT OF NAMIBIA MAIN DIVISION, WINDHOEK

JUDGMENT

Case No: I 3296/2011

In the matter between:

MARTHA SABINA MADISIA

PLAINTIFF

And

MARIUS JOHANNES STEYTLER

DEFENDANT

Neutral citation: *Madisia v Steytler* (I 3296/2011) [2014] NAHCMD 135 (14 April 2014)

Coram: UNENGU AJ

Heard: 7 April 2014

Delivered: 14 April 2014

Flynote: Practice – Civil claim – Plaintiff lay litigant – failure to present evidence to prove claim – claim dismissed with costs.

Summary: The plaintiff who litigated in person failed to present evidence to prove her claim of N\$3 000 000.00 resulting in her claim being dismissed with costs.

ORDER

The claim is dismissed with costs, which costs to include the costs of one instructing and one instructed counsel.

JUDGMENT

UNENGU, AJ:

[1] The plaintiff, Martha Sabina Madisia has sued the defendant Dr MJ Steytler whom she referred to as a home doctor during the trial.

[2] The claim against the defendant is a consequence of a written agreement entered into between the plaintiff and the defendant during February 2008 in which agreement the defendant undertook to treat the plaintiff's heels on both her feet.

[3] On or around March 2008 the defendant in fulfilment of his obligation in terms of the agreement, performed an operation on the plaintiff. She claimed in the particulars of claim that when the bandages were removed her toes were out of position and the ankles swollen.

[4] She alleged further that a second operation was performed by the defendant in November of the same year as her condition did not improve with the first operation.

[5] After the second operation, the plaintiff alleges that she was unable to walk long distances, cannot wear any closed shoes and suffers from constant pain and can no longer work. This condition, she alleges, was solely caused by the defendant's negligence and as a result of the negligence she suffered damages in the amount of N\$3 000 000.00 constituted as follows:

- (1) Pain and suffering: N\$1 000 000.00.
- (2) Inconvenience and loss of earning: N\$1 000 000.00
- (3) Further medical expenses: N\$ 1 000 000.00

The defendant is indebted and liable to the plaintiff which amount defendant has refused, failed or neglected to pay to the plaintiff despite due demand.

[6] In his plea, the defendant, amongst others, denied acting negligently when he performed the operations and that he was indebted and liable in the amount of N\$3 000 000.00 claimed by the plaintiff.

[8] After the pleadings closed, the matter was docket allocated to me for judicial case management purposes. A pre-trial conference was held, whereafter the matter was enrolled for trial on the fixed roll of 3-5 April 2013 at 10h00.

[9] However, the trial of the matter did not commence on the trial dates slated for trial due to the fact that Mr Kanguuehi of Hengari, Kanguuehi and Kavendjii Inc, who represented the plaintiff withdrew from record. The plaintiff then applied for and was granted a postponement to look for another legal representative to assist her.

[10] She applied for legal aid and Mr Tjombe of Tjombe-Elago Law Firm was appointed by Legal Aid to represent her. Once again Mr Tjombe had to withdraw due to disagreement between him and the plaintiff. As a result therefore, and the

fact that she is unable to appoint another legal representative of her own choice due to lack of funds, the plaintiff was left with no other choice than to litigate in person.

[11] No doubt, the lack of legal representation for plaintiff has negatively affected the presentation of her case as the cause of her claim is of a complex nature requiring special skill beyond her knowledge.

[12] At the trial, the plaintiff took care of her own case while the defendant was represented by Ms van der Westhuizen, instructed by Mr Kenny of Messrs Theunissen, Louw and Partners.

[13] As expected, the plaintiff, in evidence in chief only told the Court that she was twice operated on by the defendant for pains in one of her ankles. That she still suffers from pains in the ankle operated on. She said that during the operation her tendons might have been cut because she developed claw toes and as a result she is unable to wear closed shoes and find it difficult to walk long distances. She cannot work any longer. No evidence was presented about the damage she suffered in the process and whether this damage was a result of the negligence by the defendant.

[14] In cross-examination by Ms van der Westhuizen the plaintiff added more confusions to her case. She blamed her erstwhile legal representative of not carrying out her instruction that she did not want to take the defendant to court but rather wanted the matter settled outside court between the two of them. She also conceded that she has problems in proving her claim against the defendant as none of the doctors who treated her after the operation was willing to testify against their colleague, the defendant.

[15] The defendant's case was closed after the case for the plaintiff was closed, as no case was made out by the plaintiff for the defendant to answer.

[16] The plaintiff and counsel for the defendant addressed the Court whereafter the matter was postponed to afford the Court the opportunity to consider the evidence and prepare its judgment.

[17] As previously indicated, the plaintiff as a lay litigant, had some difficulties in handling this tricky and complicated claim against the defendant. She failed to link her cause of action with the operations by the defendant. No evidence was presented to prove that the defendant performed the operations in a negligent manner breaking the agreement entered into by the plaintiff and the defendant to treat her heels of both feet.

[18] Therefore, for the above reasons and conclusion, I am of the view that the plaintiff failed to prove on a balance of probabilities that the defendant is indebted and liable to her in the amount of N\$3 000 000.00 as damage for pain and suffering; loss of present and future earnings; inconvenience and for future medical costs.

[20] In the result, I make the following order:

The claim is dismissed with costs, which costs to include the costs of one instructing and one instructed counsel.

E P Unengu
Acting Judge

APPEARANCE

For the plaintiff:

In Person

For the defendant:

Adv C van der Westhuizen
Instr. by Theunissen, Louw & Partners