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REPUBLIC OF NAMIBIA

NOT REPORTABLE



HIGH COURT OF NAMIBIA MAIN DIVISION, WINDHOEK

JUDGMENT

Case no: I 3066/2010

In the matter between:

HEVILNELAO JOSUA
JOGANDY OMWA IYAMBO

1ST PLAINTIFF
2ND PLAINTIFF

And

MARTIN NAMBALA T/A CITY HOUSE SERVICE

1ST DEFENDANT

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Neutral citation: *Josua v Nambala ta City House Service* (I 3066/2010) [2014] NAHCMD 346 (14 November 2014)

Coram: MILLER, AJ

Heard: 30 September 2014

Delivered: 14 November 2014

ORDER

I therefore make the following orders:

- a) The defendant is ordered to pay to the plaintiffs the sum of N\$140,272.20 together with interest thereon at 20% per annum from the date of judgment to the date of payment;
- b) Costs of suit which will include the fees charged by Mr Bruce and Mr Reed.

JUDGMENT

MILLER, AJ:

[1] In this matter is common cause that the defendant was contracted to construct a residential dwelling for the plaintiffs on premises situated at Erf 1....., M..... S..... C.....

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in Windhoek.

[2] As matters turned out the defendant did not complete the structure. The plaintiffs cancelled the agreement before the building was completed, because so it is alleged the standard of the workmanship was not done in a professional and workmanlike manner. The plaintiffs thereupon instituted action against the defendant.

[3] The defendant denies that he performed the construction in an unprofessional manner.

[4] During the course of the trial I heard the evidence of several witnesses including that of the first plaintiff and the defendant as well as two experts being Mr Hugh Bruce and Mr Dirk Johannes Reed. I also conducted an inspection in loco at the premise.

[5] It is common cause that during the course of construction of the dwelling, large cracks appeared in some of the walls. These are shown in photographs handed in during the course of the evidence and were observed at in inspection in loco. Some of the cracks had widened to the extent that daylight is visible through the cracks. Some door frames were skew and there as some height differentiation between different wall. In addition when the roof was to be erected it was found that the house was not square there being a discrepancy of 120 millimetres between width of the eastern and western walls.

[6] According to Mr Bruce the defects are of such a nature that the structure is not

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suitable for habitation and should be demolished. In essence the only serious dispute between the defendant and the plaintiffs is the cause of the cracks appearing in the walls. Both Mr Bruce and Mr Reed are of the opinion that the cause of the cracks can be found in the foundation of the building which was not of adequate thickness.

[7] They testified that due to the nature of the soil in the area of Cimbebasia, the minimum required thickness of the foundation should be 250 millimetres. This fact significantly is not dispatched by the defendant, who stated that the foundations were in fact at least 250 millimetres. During the course of the inspection in loco some trenches hand been dug in order to expose the foundation. The thickness of the exposed section of the foundation was measured. None of the exposed sections were of the required thickness. In fact they measured between 100 and 120 millimetres. The defendant who was present at the inspection agreed with the measurements.

[8] Not only does this confirm the opinions expressed by Mr Bruce and Mr Reed but it considerably weakens the stance adopted by the defendant that the source of the cracks is to be found in the fact that the casting of floors was defective. The defendant did not cast the floors.

[9] When I consider the evidence in its totality together with the probabilities of the case, I can only conclude that a balance of probabilities the cracks were caused by the inadequate foundation.

[10] The remaining defects which I have mentioned were not really contested by the defendant. I conclude that the defendant performed the work in a most unprofessional and unworkmanlike manner, with the result that he is liable to compensate the plaintiffs in the amount claimed which is N\$140,272.20.

[11] I therefore make the following orders:

- c) The defendant is ordered to pay to the plaintiffs the sum of N\$140,272.20 together with interest thereon at 20% per annum from the date of judgment to the date of payment;
- d) Costs of suit which will include the fees charged by Mr Bruce and Mr Reed.

P J Miller
Acting Judge

APPEARANCES

PLAINTIFFS: Mr B Viljoen

Of: VILJOEN & ASSOCIATES

1ST DEFENDANT: Mr T Ipumbu

Of: TITUS IPUMBU LEGAL PRACTITIONERS