

REPUBLIC OF NAMIBIA



HIGH COURT OF NAMIBIA MAIN DIVISION, WINDHOEK

JUDGMENT

Case no: I 471/2010

In the matter between:

**B V INVESTMENTS 264 CC  
FREDRICH WILLY SCHROEDER**

**FIRST PLAINTIFF  
SECOND PLAINTIFF**

and

**FNB NAMIBIA HOLDINGS LTD  
DEFENDANT  
REPUBLIKEIN  
DEFENDANT  
RONELLE RADEMEYER  
DEFENDANT**

**FIRST  
SECOND  
THIRD**

**Neutral citation:** BV Investments 264 CC v *First Namibia Holdings Ltd* (I 471-2010) [2015] NAHCMD 129 (3 June 2015)

**Coram:** MILLER AJ

**Heard:** 4 December 2014; 3 March 2015; 28 April 2015

**Delivered:** 3 June 2015

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**ORDER**

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In my view the application before me is res judicata. The application is dismissed with costs which include the costs of one instructing and one instructed counsel. In view of my findings I do not deem it necessary to deal with the counter-application.

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**JUDGMENT**

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MILLER, AJ:

[1] This matter dates back to 26 February 2008 when the plaintiffs/applicants issued summons against the defendants/respondents. Since that date there were various applications and counter-applications.

[2] I will not burden this judgment with a full exposition the route of this case has followed. Instead I will confine myself to what is presently before me. That is an application at the instance of the plaintiffs for default judgment to be entered against the defendants.

[3] I summarize the relevant facts

- (a) Following the issue of the summons the defendants filed their notices of intention to defend the action.
- (b) In addition the first defendant filed an exception to the particulars of claim on 11 May 2010 on the basis that the particulars of claim did not disclose a cause of action.

- (c) Thereupon the plaintiffs set the matter down for hearing on 10 September 2010 for an application for default judgment to be heard.
- (d) The application became opposed and was subsequently heard by Botes AJ on 30 November 2010.
- (e) On 12 January 2010 Botes AJ dismissed the application for default judgment.

[4] At the heart of the plaintiffs' claim that they were entitled to default judgment, was a submission that the notices of intention to defend were not valid since none of the legal practitioners who filed the documents were authorized to do so.

[5] Botes AJ in his written judgment considered that the point was badly taken, was demonstrably ill conceived and should be dismissed. The present application before me is based on the same premise. The alleged lack of authority argument is raised once more.

[6] The second plaintiff who appears in person and has done so all along seems to suggest that the judgment of Botes AJ is invalid and irregular. For that the contention he relies on the judgment of Heathcote AJ in *Namibia Development Corporation v Aussenkehr Farms (Pty) Ltd* 2010 (2) NR 703 (HC).

[7] That judgment deals with irregular and void steps taken by the parties to the litigation. It is no authority for the submission now advanced by the plaintiffs.

[8] Once a court has pronounced itself on a matter the judgment or order is final and binding on the parties. A disgruntled party who feels aggrieved must take the judgment on appeal and hope it succeeds.

[9] In my view the application before me is res judicata. The application is dismissed with costs which include the costs of one instructing and one instructed counsel. In view of my findings I do not deem it necessary to deal with the counter-application.

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P J MILLER  
Acting Judge

APPEARANCES

PLAINTIFF: Mr Fredrich Willy Schroeder  
In- Person

FIRST DEFENDANT: Mr Jesse Schickerling  
Instructed by Van Der Merwe-Greef Inc. Windhoek