



HIGH COURT OF NAMIBIA MAIN DIVISION, WINDHOEK

JUDGMENT

Case no: I 3614/2013

In the matter between:

STANDARD BANK NAMIBIA LIMITED

PLAINTIFF

And

RONNIE GERTZE

DEFENDANT

Neutral citation: *Standard Bank Namibia Limited v Gertze* (I 3614-2013) [2015]
NAHCMD 144 (18 June 2015)

Coram: PARKER AJ

Heard: 11 June 2015

Delivered: 18 June 2015

Flynote: Applications and motions – Defendant failing to comply with order of court to file amended plea to particulars of claim in an action within a time limit – Defendant rather launching an application – Court found that applicant failed to comply with court order and concluded that he was accordingly barred – Court held that the principle in *Christian v Metropolitan Life Namibia Retirement Annuity Fund and Others* 2008 (2) NR 753 (SC) about pleadings filed by lay persons representing themselves not to be taken too far to cover situations where a rule of court or an order of the court has not been complied with at all – Relying on *Kalenga Iyambo v S* Case No. CA 165/2008 (Unreported) court held that lay litigants representing themselves are just as much under an obligation as those represented by counsel to

comply with orders of court – Invoking the rules of court respecting consequences following upon non-compliance with the rules or orders of the court, defendant's application was dismissed with costs.

Summary: Applications and motions – Defendant failing to comply with order of court to file amended plea to particulars of claim in an action within a time limit – Defendant rather launching an application – Court found that applicant failed to comply with court order was accordingly barred – Court held that the principle in *Christian v Metropolitan Life Namibia Retirement Annuity Fund and Others* 2008 (2) NR 753 (SC) about pleadings filed by lay persons representing themselves not to be taken too far to cover situations where a rule of court or an order of the court has not been complied with at all – Relying on *Kalenga Iyambo v S* Case No. CA 165/2008 (Unreported) court held that lay litigants representing themselves are just as much under an obligation as those represented by counsel to comply with orders of court – Defendant gave no explanation satisfactory to the court for failure to comply with the court order which he acquiesced in and which he informed the court he understood – Invoking the rules of court respecting consequences following upon non-compliance with the rules or orders of court, defendant's application was dismissed with costs.

ORDER

- (a) The application filed on 10 June 2015 is dismissed with costs, including costs of one instructing counsel and one instructed counsel.
- (b) The plaintiff's legal practitioner and the defendant in person, if unrepresented by counsel, must attend a status hearing this day (18 June 2015) at 08h30 at which the court shall determine the further conduct of the matter.

JUDGMENT

PARKER AJ:

[1] In July 2014 the defendant, who represents himself, launched an application in terms of rule 61 of the rules of court. The application was heard on 18 March 2015 and was struck from the roll, and reasons for the ruling is contained in a judgment delivered on 31 March 2015. It was ordered then that the 'plaintiff's legal practitioner and the defendant in person (if unrepresented) must at 08h30 on 30 April 2015 attend a status hearing to determine the further conduct of the matter'. As respects the status hearing on that date the following status hearing order was made:

- (a) The defendant to file amended plea to the particulars of claim on or before 20 May 2015.
- (b) The legal representatives or parties in person (if unrepresented) must attend a status hearing at 08h30 on 11 June 2015 to determine the further conduct of the matter.

[2] Upon enquiry from the court then, the defendant informed the court that he understood the order. Meanwhile, without any explanation – satisfactory to the court – why the 30 April 2015 order has not been complied with, the defendant launched this application. The compliance with the order (as I say, in particular para 1 of it) is important. It was to enable the court on that day (11 June 2015) to direct the parties to the next step in the proceeding in the judicial case management process.

[3] Mr Van Vuuren, counsel for the plaintiff, submitted that the defendant has not complied with the 30 April 2015 order (in particular para 1 of the order), an order which the defendant acquiesced in. For that reason, counsel submitted that the defendant should be barred from doing so, and the matter should proceed to pre-trial conference; and thence to trial.

[4] As I understand the defendant in his submission, the defendant submitted that the plaintiff has no case. I understood him to say that he has a good and bona fide defence to the claim. If that is his position, I would have thought that the defendant would want his day in court promptly in a trial where he would have the opportunity to defend the claim. Besides, in that event, before the trial, the defendant would have the opportunity to set out in the parties' proposed pre-trial order, together with the plaintiff's legal practitioners, the dispute on issues of law and issues of fact that in his view divide them for the court's adjudication at the trial. But then when Mr Van Vuuren submitted that if that was what the plaintiff wanted, which incidentally was exactly what the plaintiff also desires, that is, for the matter to proceed to trial promptly, then that being the case, the defendant should withdraw the application. The defendant was not prepared to do so, necessitating the determination of the plaintiff's preliminary objection at the threshold, that is, the submission by Mr Van Vuuren that as a consequence of the defendant's non-compliance with the 30 April 2015 order, the defendant is barred, and that the application should be struck and the matter proceed to pre-trial conference; and thence to trial.

[5] I have considered the papers and the submission of Mr Van Vuuren and that of the defendant. In this regard, I have also taken counsel from the holding by the Supreme Court that pleadings prepared by lay persons representing themselves ought to be construed generously and in the light most favourable to such litigants, and in that regard it is the substance of the pleadings not the form in which the pleadings have been formulated that ought to be considered. (*Christian v Metropolitan Life Namibia Retirement Annuity Fund and Others* 2008 (2) NR 753 (SC). But, I said in *Heita v The Minister of Safety and Security* (A 380/2013) [2013] NAHCMD 330 (8 November 2013), para 4 -

'the (Supreme Court) proposition should not be taken too far to cover situations where a rule of court has not been complied with at all ...'

Damaseb JP states the position in even starker terms thus in *Kalenga Iyambo v S*, Case No. CA 165/2008, para 10:

‘What we want to stress is that lay litigants are just as much under an obligation as those represented by Lawyers to follow the rules of court, and cannot, as they please, (fail to) comply with the rules of court.’

[6] In the same vein, lay litigants who represent themselves are just as much under an obligation as those represented by counsel, and so, they cannot, as they please, fail to comply with orders of the court. If they do, as is in the instant matter, the consequences set out in the rules for such non-compliance should follow; as they do in the present proceeding.

[7] Based on these reasons, the application is truck from the roll. It remains to consider the question of costs. In the judgment delivered on 31 March 2015, I did not award costs to the plaintiff, albeit, the plaintiff was successful. I gave reasons based on the considerations I articulated there for my decision. The same considerations do not exist in the instant proceedings. Therefore, in the instant proceedings, costs should follow the event accordingly, as they do.

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

- (a) The application filed on 10 June 2015 is dismissed with costs, including costs of one instructing counsel and one instructed counsel.
- (b) The plaintiff’s legal practitioner and the defendant in person, if unrepresented by counsel, must attend a status hearing this day (18 June 2015) at 08h30 at which the court shall determine the further conduct of the matter.

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C Parker
Acting Judge

APPEARANCES

PLAINTIFF : A Van Vuuren
Instructed by Behrens & Pfeiffer, Windhoek

DEFENDANT: In Person