

REPUBLIC OF NAMIBIA



**HIGH COURT OF NAMIBIA MAIN DIVISION, WINDHOEK
JUDGMENT**

CASE NO.: I 471/2010

In the matter between:

**BV INVESTMENTS 264 CC
FREDERICH WILLY SCHROEDER**

**1ST PLAINTIFF
2ND PLAINTIFF**

And

**FNB NAMIBIA HOLDINGS LTD
REPUBLIKEIN
RONELLE RADEMEYER**

**1ST DEFENDANT
2ND DEFENDANT
3RD DEFENDANT**

Neutral citation: *BV Investments 264 CC v FNB Namibia Holdings Ltd* (I 471-2010)
[2010] NAHCMD 156 (1 July 2015)

Coram:

SMUTS J

Heard:

28 September 2012

Delivered:

28 September 2012

Further reasons:

1 July 2015

REASONS

SMUTS J

[1] On 27 April 2015, the second plaintiff delivered a notice at the Supreme Court seeking reasons for a judgment I had given in 2012 in the High Court in this matter. I was on that date on long leave and returned to the Supreme Court on 16 June 2015. The second plaintiff was informed of this fact.

[2] The request for reasons had attached to it a copy of an earlier request for reasons dated 22 November 2012. This attachment had a date stamp of the Registrar of the High Court of 22 November 2012. It in turn referred to an earlier similar request dated 10 October 2012.

[3] The court file had unfortunately not been referred to me at the time and I was entirely unaware of these requests until after the request dated 27 April 2015 delivered at the Supreme Court had been drawn to my attention.

[4] This matter had served before me on the unopposed motion roll on 28 September 2012. It is an application brought by the applicants against the listed respondents.

[5] The second applicant appeared in motion court in person on 28 September 2012 and stated that he also appeared for the first applicant. After placing himself on record, the second applicant pointed out that an application dated 17 September 2012 had been served on the respondents, notifying them to file a notice to oppose by 24 September 2012. He said

that no such notices were given. He accordingly moved for the relief set out in the notice of motion.

[6] The first respondent was however represented by Mr Schickerling in motion court. He referred to an answering affidavit which had been served and filed on 26 September 2012 which was also on the court file. Mr Schickerling moved that the application be postponed for a date to be arranged with the Registrar so that the matter could be docket allocated.

[7] The second applicant acknowledged that he had received the answering affidavit but said that no notice to oppose had been given by the time limit of 24 September 2012, assuring that he would be able to obtain judgment by default against the respondents. That assumption was of course entirely erroneous. An answering affidavit had been filed and the application was no longer unopposed. The fact that a notice to oppose had not been delivered on the date provided for in the notice of motion would not entitle an applicant to judgment on an unopposed basis if an answering affidavit setting out opposition is duly served in advance of the date in the notice of motion for a hearing in default of opposition. At best for the second applicant the issue of costs in respect of the appearance in motion court may arise. But this was not raised and not pursued.

[8] After the second applicant confirmed receipt of the answering affidavit on 26 September 2012, I directed that the matter be postponed to a date to be allocated in case management. In doing so, the transcribed record reflects that I stated the following:

“Court: The matter is now opposed and I am going to postpone this matter and it will be proceeding and it will be postponed for a date to be allocated by a case management Judge and the parties should be advised by the Registrar as to who the case management Judge is.”

[9] My reason for postponing the matter to a date to be allocated in case management was thus plainly stated in court at motion court. It was because it had then become opposed. I have established that the matter was thereafter duly docket allocated to another judge and has since then become protracted. The reason why the request for reasons may not have been provided to me in 2012 may have been because of the allocation to case management and the subsequent proceedings rendered the request superfluous.

DF Smuts
Judge

APPEARANCES:

APPLICANTS:

F W Schroeder

In person

FIRST, SECOND & THIRD DEFENDANTS:

J Schickerling

Instructed by Van der Merwe-Greeff

Andima Inc.