

REPUBLIC OF NAMIBIA



HIGH COURT OF NAMIBIA MAIN DIVISION, WINDHOEK

JUDGMENT  
(EX TEMPORE)

Case no: I 2580/2011

In the matter between:

**MARTIN KAUKO INDONGO**

**PLAINTIFF**

and

**SOFIA NANGOMBE**

**1<sup>ST</sup> DEFENDANT**

**MILKA NUUGULU**

**2<sup>ND</sup> DEFENDANT**

**NAGSON NARUSEB**

**3<sup>RD</sup> DEFENDANT**

**THEPAZILIE CLEOPATRA HARUSEB**

**4<sup>TH</sup> DEFENDANT**

**IVAN KUSIE HARASEB**

**5<sup>TH</sup> DEFENADNT**

**SARA NDAHANGA NANGOMBE**

**6<sup>TH</sup> DEFENADNT**

**HELVI BEYONCE NANGOMBE**

**7<sup>TH</sup> DEFENDANT**

**NATIONAL HOUSING ENTERPRISE**

**8<sup>TH</sup> DEFENDANT**

**MASTER OF THE HIGH COURT**

**9<sup>TH</sup> DEFENDANT**

**REGISTRAR OD DEEDS**

**10<sup>TH</sup> DEFENDANT**

**Neutral citation:** *Indongo v Nangombe* (I 2580/2011) [2018] NAHCMD 143 (30 May 2018)

**Coram:** UNENGU AJ

**Heard:** 29 May 2018

**Delivered:** 30 May 2018

**Flynote:** Civil Practice – Failure to comply with judgment order dated 8 September 2017 and non-appearance by the first defendant – First defendant's defence and counterclaim struck out – Judgment granted in favour of the plaintiff with costs.

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### **ORDER**

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1. The defence and counterclaim of the first defendant are hereby struck out.
  2. First defendant to pay costs which costs to include costs consequent to the employment of one instructing and one instructed counsel.
  3. Judgment is granted in favour of the plaintiff.
  4. The first defendant and all her dependants are hereby evicted from the aforesaid property, Erf 13, Amsterdam Street, No 80, Otjomuise, Windhoek, Republic of Namibia.
  5. Costs of suit, which costs to include costs consequent to the employment of one instructing and one instructed counsel.
  6. Matter is finalised.
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### **JUDGMENT**

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UNENGU AJ:

[1] The plaintiff in the matter, Martin Kauko Indongo, issued summons against the first defendant, Sofia Nangombe, on 16 August 2011, wherein he prayed for an order in the following terms:

'1. An order directing that the Defendant and her dependants be evicted from the aforesaid property, to wit Erf 13, Amsterdam Street, No 80, Otjomuise, Windhoek, Republic of Namibia.

2. Cost of suit.

3 Further and/or alternative relief.'

[2] Thereafter, the case was postponed on numerous occasions on the request of the first defendant and cost orders were granted against her for failure to appear before court. Every time when the matter was called for trial, first defendant and her counsel raised various excuses to justify the delays. Ultimately on 8 September 2017, seven years later, I delivered a judgment, *Indongo v Nangombe*<sup>1</sup> where I made the following order:

'1. The first defendant pays reservation fees for 18 July 2017 in respect of one instructed and one instructing counsel;

2. The first defendant pays the plaintiff taxed wasted costs for the 19 and 21 July 2017 on the scale of the attorney and own client occasioned as a result of the first defendant's failure to attend court proceedings;

3. The wasted costs in para (ii) above must be paid before the next trial date.

4. Failure to comply with any of the orders in paras (i) – (iii) ipso facto have the effect of the first defendant's defence and counter-claim struck down allowing the plaintiff to proceed with his claim unopposed.

5. No cost order made against the legal representative.'

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<sup>1</sup> *Indongo v Nangombe* (I 2580/2011) [2017] NAHCMD 261 (8 September 2017).

[3] This judgment was made after the plaintiff had led evidence in the matter and was busy being cross-examined by counsel for the first defendant. Thereafter, the matter was postponed to 29 May 2018 for continuation of proceedings. When the matter was called, the first defendant and her counsel were absent from court. The court waited for more than half an hour for the first defendant and her counsel, Ms Hans, to pitch up at court despite the fact that the matter was scheduled to start at 10h00. After the arrival at court, Ms Hans informed the court that she does not know the whereabouts of her client. She informed the court that her client's daughter told her that the mother (client) was in hospital. This, Ms Hans, could not confirm because she does not have documents to proof that the client is indeed hospitalised. She further informed the court that her client did not comply with the judgment order of 8 September 2017. Furthermore, that she did not have instructions from her client to proceed with the matter. As a result, Ms Hans withdrew as the first defendant's legal practitioner of record and the court accepted her withdrawal and was excused.

[4] That being the case, and in view of the fact that the plaintiff already testified in the matter and was being cross examined by counsel for the first defendant who failed to continue with cross-examination due to her absence from court, Mr Strydom, counsel for the plaintiff sought for an order to strike out the first defendant's defence and counterclaim and costs consequent of the employment of one instructing and one instructed counsel. He further asked for judgment to be granted in favour of the plaintiff as prayed for in the particulars of claim.

[5] I have no reason not to grant the relief sought by Mr Strydom in light of the history of this matter and no postponement was sought from the first defendant or her counsel.

In the result, I make the following order:

1. The defence and counterclaim of the first defendant are hereby struck out.
2. First defendant to pay costs which costs to include costs consequent to the employment of one instructing and one instructed counsel.
3. Judgment is granted in favour of the plaintiff.
4. The first defendant and all her dependants are hereby evicted from the aforesaid property, Erf 13, Amsterdam Street, No 80, Otjomuise, Windhoek, Republic of Namibia.
5. Costs of suit, which costs to include costs consequent to the employment of one instructing and one instructed counsel.
6. Matter is finalised.

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E P UNENGU

Acting Judge

## APPEARANCES:

PLAINTIFF:

Strydom

instructed by Fisher, Quarmby &amp; Pfeifer, Windhoek

FIRST DEFENDANT:

Hans

of Ueitele &amp; Hans Inc., Windhoek