

**REPUBLIC OF NAMIBIA**



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

**JUDGMENT**

Case no: I 166/2016

In the matter between:

**ZEST INVESTMENTS SEVENTY-THREE CC**

**PLAINTIFF**

and

**MUNICIPAL COUNCIL OF THE**

**MUNICIPALITY OF WINDHOEK**

**FIRST DEFENDANT**

**THE MINISTER OF URBAN AND RURAL**

**DEVELOPMENT**

**SECOND DEFENDANT**

**QUIVER TREE INVESTMENTS**

**TWO SIX CC**

**THIRD DEFENDANT**

**Neutral citation:** *Zest Investments Seventy-Three CC v Municipal Council of Windhoek* (I 166/2016) [2018] NAHCMD 186 (22 June 2018)

**Coram:** USIKU, J

**Heard on:** 14, 15, 16 and 17 August 2017 and 25 October 2017

**Delivered:** 22 June 2018

**Flynote:** Contract – Sale of land – Breach of contract by purchaser – Purchaser failing to furnish Seller with guarantee payable against registration of transfer of the property– Purchaser furnishing Seller with guarantee payable “*subject to availability of funds*” – Such guarantee not a guarantee required in terms of the contract.

**Summary:** The First Defendant sold certain immovable property to the Plaintiff in terms of a written agreement of sale. In terms of the agreement, the Plaintiff was obliged to furnish the First Defendant with a bank guarantee payable against registration of transfer of the property. The Plaintiff furnished the First Defendant with a letter of undertaking from a law firm undertaking to pay the purchase price “*subject to availability of funds*” The court held that a letter of undertaking or bank guarantee payable “*subject to availability of funds*” is not a guarantee contemplated in terms of the written agreement between the parties. The court held further that the First Defendant was entitled to cancel the agreement due to failure by the Plaintiff to provide a guarantee payable against registration of the transfer of the property. Plaintiff’s claim dismissed with costs.

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### ORDER

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1. The Plaintiff’s claim is dismissed.
2. The Plaintiff is ordered to pay the costs of the Third Defendant, such costs to include costs of one instructing and one instructed counsel.
3. The Registrar of this court is directed to forward a copy of this judgment to the First Defendant, to look into the concerns raised in paragraph 47 of this judgment.
4. The matter is removed from the roll and regarded finalized.

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## JUDGMENT

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USIKU, J:

### Introduction

[1] On 26 January 2016, the Plaintiff instituted action against the First Defendant claiming judgment in the following terms:

- (a) transfer of the following immovable property namely:
  - Certain: Remaining Extent of Erf No. 8413, Windhoek;
  - Situate: In the Municipality of Windhoek, Registration Division “K” Khomas Region;
  - Measuring: 5 277 square metres;into the name of the Plaintiff against payment of the purchase price;
- (b) costs of suit, including the costs one instructing and one instructed counsel;
- (c) further and/or alternative relief.

### The parties in the present matter

[2] The Plaintiff is Zest Investments Seventy-Three Close Corporation, a close corporation duly registered and incorporated in terms of the laws of Namibia.

[3] The First Defendant is the Municipal Council of Windhoek, established in terms of section 6(1) of the Local Authorities Act (Act 23 of 1992). The First Defendant had initially defended the action but withdrew its defence on the 22 March 2017 and tendered costs. At present the First Defendant does not defend the action.

[4] The Second Defendant is the Minister of Urban and Rural Development, cited in her official capacity as such. No relief is sought against the Second Defendant, as she is cited due to interest she may have in the matter. The Second Defendant does not defend the action.

[5] The Third Defendant is Quiver Tree Investments Two Six Close Corporation, a close corporation duly registered and incorporated in terms of the laws of Namibia. As would become apparent later, the First Defendant had cancelled a sale agreement in terms whereof the aforesaid immovable property was sold to the Plaintiff, and subsequently resolved to allocate the property for sale to the Third Defendant. Against this backdrop, the Third Defendant defends the action.

#### Background

[6] The dispute between the Plaintiff and the Third Defendant arises out of a written agreement of sale concluded on the 20 May 2015 between the First Defendant and the Plaintiff. In terms of that agreement, the First Defendant sold to the Plaintiff the immovable property (“the property”), described under paragraph [1] hereof, for the purchase price of N\$ 8 595 000.00. A non-refundable amount of N\$ 42 975.00 was payable by the Plaintiff to the First Defendant against the signing of a Reservation Allocation Letter.

[7] In terms of clause 2.2.2 of the agreement the Plaintiff was obliged to provide the First Defendant, *“within 60 days from the date of sale, a Bank or Financial Institution Guarantee, payable against registration of transfer, for the full purchase price and interest as well as all amounts due to the seller in terms of this agreement.”*

[8] Clause 12 of the agreement confers a right to the First Defendant, *inter alia*, to cancel the agreement should the Plaintiff:

'fail on due date to submit the necessary guarantee or fail to pay the purchase price or any portion thereof or commit any breach of any of the terms of this agreement, the SELLER shall, notwithstanding the condition precedent created in clause 2.4 and 2.5 above, be entitled at its option-

12.1 after thirty (30) days notice given personally or by registered post to the PURCHASER of its intention to do so, to cancel the sale hereby made . . . .'

[9] Clause 20 of the agreement reads:

'No relaxation of a term or condition of this Agreement by the SELLER and no indulgence which the SELLER may expressly or by implication concede to the PURCHASER , by not insisting on explicit performance of the PURCHASER'S obligations in terms of this Agreement, nor the acceptance of any payments after due date, shall prejudice the SELLER'S rights under this Agreement nor be constructed as constituting a waiver of any such right, nor shall it be constructed as a novation of this Agreement or as a tacit amendment of any of the terms or conditions of this Agreement. None of the foregoing shall operate as an Estoppel against the SELLER.'

[10] And clause 16 (1) of the agreement provides:

'Transfer of the PROPERTY shall be given to the PURCHASER, as soon as possible after payment of the full purchase price plus interest, if payment of interest is applicable or provision of an acceptable Bank or Building Society guarantee in respect of any unpaid amounts.'

[11] On 04 February 2015, the Plaintiff paid to the First Defendant the N\$ 42 975.00 non-refundable amount referred to in para [6] hereof.

[12] As earlier stated, the Plaintiff and the First Defendant concluded the aforesaid agreement on 20 May 2015.

[13] By letter dated 18 August 2018, the Plaintiff requested the First Defendant for an extension of 30 days to allow the Plaintiff opportunity to secure approval for bank-finance in respect of the purchase price.

[14] By letter dated 25 August 2015, the First Defendant responded, informing the Plaintiff that the First Defendant was invoking clause 12 of the agreement and that the Plaintiff was afforded 30 days from the date of the letter to furnish the required guarantee. This letter reads:

**'FINAL NOTICE OF CANCELLATION OF THE SALE OF REMAINDER OF ERF 8413 WINDHOEK**

Reference is made to your letter dated 18 August 2015 and received on 25 August 2015. A further reference is also made to the letter from Bank Windhoek dated, 15 August 2015, but only received on 25 August 2015 regarding the same matter.

As per clause 2.1 and sub-clause 2.2.2 on the Deed of sale, you were granted sixty (60) days from the date of signature, which date was 20 May 2015, to provide Council with a Bank or Financial Institution's Guarantee. The date on which you were to provide such a Bank Guarantee lapsed on 20 July 2015.

You thus failed to comply with the conditions of the above clauses of the Deed of Sale. You had sufficient time since 20 July 2015 to provide the City with the required Bank Guarantee and hence your request for further extension is equally not granted.

The City herewith invokes the conditions of Clause 12 of the Deed of Sale and hereby gives you a notice of cancellation. You are therefore informed that this letter gives you the notice to submit the required Bank Guarantee within a period of 30 days from the date of this letter. Failure to comply with this notice shall lead to automatic cancellation of this sales transaction and no further negotiations shall be accommodated.

Trusting that you will find the above in order,

Yours faithfully

(Signature)

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MR. K. UIRAB  
ACTING MANANGER: PROPERTY MANAGEMENT'

[15] On 21 September 2015 the law firm Ellis Shilengudwa Incorporated (“ESI”) issued a letter of undertaking in favour of the First Defendant, in the following terms:

**‘YOUR TRANSFER: ERF NO 8413, WINDHOEK**

**MUNICIPAL COUNCIL OF WINDHOKE // ZEST INVESTMENT CC**

We hereby wish to advise that we hold at your disposal an amount of N\$ 10'682'525.34(TEN **Million Six Hundred And Eighty Two Thousand Five Hundred And Twenty Five Namibia Dollars And Thirty Four Cents**) [which amount is inclusive of VAT and interest calculated up until 31 December 2015] plus 15% interest per annum calculated on N\$ 8 595 000.00 as from 31 December 2015 until date of payment (both dates inclusive), which will be paid to you free of exchange on completion of the following transactions and subject to the availability of funds:

1. Registration of the transfers of the members interest in the entities owning Sections 1 to 8 of the sectional title development “Windmill Industrial Units (East)” situated on Erf 521 (a portion of remaining extent of Erf 50) Prosperita, Windhoek;
2. Registration of the transfers of the members interest in the entities owning section 2 to 10 of the sectional title development “Windmill Industrial Units (West)” situated on Erf 522 (a portion of remaining extent of Erf 50) Prosperita, Windhoek;
3. Cancellation of all existing Bonds over the property; and
4. Registration of transfer of the Property into the name of Zest Investment CC

Should any circumstances arise to prevent, or in our opinion, unduly delay the registration of the abovementioned transactions, we reserve the right to withdraw from this undertaking by giving ourselves written notice to that effect.

This undertaking is not negotiable or transferable and must be returned to ourselves upon payment of the aforementioned amount.

Yours faithfully

PER: I Dos Santos'

[16] On 22 September 2015, the First Defendant addressed a letter to ESI, in the following terms:

**'INSTRUCTIONS: TRANSFER OF THE REMAINDER OF ERFT 8413, WINDHOEK**

THE MUNICIPAL COUNCIL OF WINDHOEK // ZEST INVESTMENTS 73 CC

The above subject matter bears reference.

The City confirms that a Letter of Undertaking was received from your office for the payment of the purchase price, 15% VAT and interest on the sale of the Remainder of Erf 8413, Windhoek. It is against this background that the City appoints you to attend to the transfer and registration of the Remainder of Erf 8413, Windhoek, into the name of the purchaser.

The details of the sale transaction are as follows:

<b>PURCHASER:</b>	:ZEST INVESTMENTS 73CC
<b>REG NO.</b>	: CC/201/2746
<b>ADDRESS</b>	: P.O BOX 3153, WINDHOEK
<b>CONTACT NO</b>	: 0812400540
<b>PURCHASER PRICE</b>	: N\$ 8,595,000.00
<b>DATE OF PURCHASER</b>	: 20 <sup>TH</sup> May 2015

**Special conditions to be registered: Clause 10.1 – 10.4, 21.1.6.7 and 21.9.1 – 21.9.6**



**All costs pertaining to this transaction should be for the account of the Purchaser.**

Kindly annexed hereto find the following:

- Copy of Deed of Sale;
- Copy of Amended Founding Statement;
- Copy of Special Power of Attorney
- Original Letter of Undertaking from your office for the sum of N\$ 9 393.34 plus 15% interest per annum calculated on N\$ 8 595 000.00 as from 31 December 2015 until date of payment, (both dates inclusive), plus 15% VAT amount to N\$ 1 289 250.00.

Yours faithfully

Signature

Mr. E Shipiki

MANAGER: PROPERTY MANAGEMENT DIVISION'

[17] Also that same day, First Defendant received a letter from the First National Bank, in the following terms:

**'CONFIRMATION OF AVAILABLE FACILITIES**

We, First National Bank of Namibia Limited, FNB Business, herein represented by Margot Ackermann and Jeffrey Katjivena, in our capacities as Commercial Property Finance Managers confirm that we have approved the amount of N\$ 6 464 200.00( Six Million, Four Hundred and Sixty Four Thousand and Two Hundred Namibia Dollar) inclusive of VAT on behalf of Zest Investments 73 CC, represented by Mr OJJ Roque at their disposal for the purchase of Erf Re/8413.

The facilities will be made available subject to conditions amongst others but not limited to the registering of a mortgage bond and the transferring of the Erf into client's name.

Yours faithfully

Signature

MARGOT ACKERMANN  
COMMERCIAL PROPERTY MANAGER

Signature

JEFFREY KATJIVENA  
COMMERCIAL PROPERTY MANAGER'

[18] By letter date the 16 October 2015, the First Defendant instructed ESI to put the transfer of the property on hold till further notice. This letter reads:

**'LETTER OF INSTRUCTION FOR TRANSFER OF THE REMAINDER OF ERF 8413  
WINDHOEK – ZEST INVESTMENTS 73 CC**

The above subject matter bears reference.

The City further refers to the letter of instruction, dated 22 September 2015 for the transfer of the Remainder of Erf 8413 Windhoek from the City to Zest Investments 73 CC.

Kindly note that you are herewith instructed to put the transfer of the Remainder of Erf 8413 Windhoek on hold until further notice.

Trusting that you find the above in order.

Yours faithfully

Signature

**L. NARIB**  
**STRATEGIC EXECUTIVE: URBAN PLANNING AND PROPERTY MANAGEMENT'**

[19] On 26 November 2015, the First Defendant passed a resolution to cancel the agreement between the Plaintiff and the First Defendant. The First Defendant further passed another resolution allocating the property to the Third Defendant for sale. The

First Defendant communicated its first-mentioned resolution to the Plaintiff in the following terms:

**'CANCELLATION OF THE SALE OF ERF R/8413, WINDHOEK TO ZEST INVESTMENTS 73 CC**

Reference is made to previous correspondence regarding the above.

The City wishes to inform you that the City Council considered the above matter at its monthly meeting held on 26 November 2015 and resolved per Council Resolution **350/11/2015**, attached hereto for ease of reference, to cancel the allocation of Erf RE/8413 Windhoek to Zest Investments 73 CC after considering the Legal Opinion submitted to the Council.

Having said the above kindly consider the Deed of Sale signed on the 20<sup>th</sup> May 2015 to be cancelled.

Thanking you in interest shown in purchasing properties from the City.

Yours sincerely

Signature

Mr. E. S Shipiki

MANAGER; PROPERTY MANAGEMENT DIVISION'

[20] Thereafter, on 26 January 2016, the Plaintiff caused summons to be issued against the Defendants praying for the relief set out in paragraph [1] hereof.

The Plaintiff's case

[21] At the trial the Plaintiff called three (3) witnesses namely: Elli Shoombe Shipiki ("Mr Shipiki"); Kenneth Uirab ("Mr Uirab") and Sophia Shaningwa ("Mrs Shaningwa").

[22] The relevant parts of Mr Shipiki's evidence was that he signed the relevant sale agreement on behalf of the Chief Executive Officer of the First Defendant, in terms of a

standing resolution taken by the First Defendant authorizing him to do so. He further confirmed that he instructed ESI on the 22 September 2015, on behalf of the First Defendant to attend to the registration of the transfer of the property into the name of the Plaintiff, on the strength of the letter of undertaking furnished by ESI to the First Defendant, dated the 21<sup>st</sup> September 2015.

[23] On the issue whether the letter of undertaking in question guarantees payment of the purchase price against registration of the transfer of the property into the name of the Plaintiff, Mr Shipiki explained that a practice has been adopted by the First Defendant whereby the First Defendant accepts letters of undertaking similar to one provided by ESI as proper instruments for payment of the purchase price.<sup>1</sup> He further underlined that he accepted the letter of undertaking in question against that background. Indeed Mr Shipiki went as far as saying that in the course of his employment at the First Defendant, he had received “so many letters of undertaking”<sup>2</sup> of the kind as the one provided by ESI and were accepted and acted upon. Mr Shipiki could not give a clear explanation why the First Defendant ultimately decided not to accept and act on the letter of undertaking provided by ESI in respect of the present transaction. All he could say is: ‘this one they did not accept’<sup>3</sup>.

[24] The testimonies of Mrs Shaningwa and Mr Uirab did not take the matter further, insofar as the issues in dispute are concerned.

[25] The Plaintiff argues that it had complied with its obligations in terms of the sale agreement and that the First Defendant breached the material terms of the agreement when it resolved to cancel the same. The Plaintiff further contends that the letter of undertaking provided by ESI constituted a bank guarantee, or alternatively, substantially complied with the requirements to furnish a bank guarantee, in terms of the agreement.

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<sup>1</sup> Page 167 of the recording proceedings.

<sup>2</sup> Page 172 of the record proceedings.

<sup>3</sup> *Ibid.*

[26] When Mr Shipiki accepted the letter of undertaking, the Plaintiff contends, the First Defendant, through Mr Shipiki, affirmed the agreement by instructing ESI to attend to the registration of the transfer of the property into the name of the Plaintiff. Any attempt to cancel the agreement after the First Defendant had elected to affirm the agreement must be seen as unlawful. The Plaintiff further contends that it has discharged its onus and is entitled to the relief of specific performance as set out in its particulars of claim.

#### The Third Defendant's case

[27] The Third Defendant closed its case without calling any witness.

[28] The Third Defendant contends that the First Defendant was entitled to invoke the provisions of clause 12 of the sale agreement and request the Plaintiff to provide the requisite guarantee within 30 days, as the First Defendant did on 25 August 2015.

[29] The letter of undertaking furnished by ESI, the Third Defendant argues, was not a Bank or Financial Institution Guarantee contemplated under clause 2.2.2 of the sale agreement. The letter of undertaking in question contains a number of conditions, the significant of which is that payment of the purchase price is subject to availability of funds.

[30] The Third Defendant thus argues that the Plaintiff has failed to comply with its aforesaid obligation in terms of the sale agreement, and accordingly failed to discharge its onus to qualify for an order for specific performance.

[31] The Third Defendant also questioned the authority of Mr Shipiki to represent the First Defendant in the execution of the sale agreement. Because of the conclusion I reach in this matter, I do not deem it necessary to determine the question of authority.

## Analysis

[32] It common cause that the Plaintiff seeks specific performance in terms of the sale agreement concluded between the Plaintiff and the First Defendant. A party claiming specific performance in terms of an agreement must allege and prove:

- (a) the terms of the agreement;
- (b) compliance with such terms or must tender to perform them (where applicable);
- (c) non-performance by the defendant; and
- (d) then claim specific performance.<sup>4</sup>

[33] The main issue for determination by this court is whether the Plaintiff had complied with its obligation in terms of the agreement to provide the First Defendant with a bank or financial institution guarantee contemplated under clause 2.2.2 of the sale agreement. In terms of clause 2.2.2 the Plaintiff is required to provide the First Defendant within 60 days from the date of sale (or after a 30 days' notice contemplated under clause 12):

- (a) a bank or financial institution guarantee;
- (b) payable against registration of the transfer of the property into the name of the Plaintiff;
- (c) for the full purchase price and interest as well as all amounts due to the First Defendant in terms of the agreement.

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<sup>4</sup> *Von Weidts v Goussard and Another* 2016 (1) NR 169 at pp 184-185.

[34] The Plaintiff contends that it had complied with the above requirement in the form of the letter of undertaking provided to the First Defendant by ESI which letter was accepted by the First Defendant.

[35] Insofar as the letter of undertaking is concerned, the crucial question is whether such letter complies with the requirements of clause 2.2.2 of the sale agreement.

[36] It is common ground that the letter in question is from ESI (a law firm) and not from a bank or financial institution. But this aspect is not crucial for the present purposes, as the purpose for requiring a guarantee is to ensure that the Seller obtains payment of the purchase price against registration of the transfer into the name of the purchaser.

[37] What appears prominently from the letter of undertaking from ESI is that, it permits registration of the transfer of the property from the First Defendant into the name of the Plaintiff without simultaneous payment of the purchase price against the registration of the transfer. The letter of undertaking in question does not guarantee payment of the purchase price against the registration of the transfer of the property. In terms of that letter of undertaking, payment of the purchase price is expressly made "*subject to the availability of funds*". This position is a far cry from the express provisions of clause 2.2.2 which require a guarantee for payment of the full purchase price plus other charges payable in terms of the agreement, against registration of the transfer of the property.

[38] In addition to the above, in terms of the aforesaid letter of undertaking, payment of the purchase price is made subject to separate, as opposed to simultaneous, registration of transfer of members' interest in undisclosed entities owning some 17 sectional units, situated in Prosperita, Windhoek.

[39] It therefore, follows from the terms of the aforesaid letter of undertaking, that:

- (a) should transfer of the members' interests in anyone of the aforesaid units not be registered, at any point in time, or;
- (b) should the Plaintiff, for any reason, not have funds available; then the First Defendant receives no payment of the purchase price, notwithstanding that registration of the transfer had already been effected in favour of the Plaintiff.

[40] Based on the above analysis, I find that the letter of undertaking in question does not comply with the requirement to provide a guarantee, contemplated under clause 2.2.2 of the sale agreement. Only a person who has *funds available*, or who has *availability* of such funds *guaranteed*, can guarantee payment. A person who has *no funds available* cannot guarantee payment. I find that the letter of undertaking furnished to the First Defendant guarantees nothing, for the purposes of clause 2.2.2 of the sale agreement, and it is as good as no guarantee was furnished at all. A promise to pay a specified amount on condition that the promisor "*has available funds*" to pay, is not "payment guaranteed". I also find that the initial acceptance of the letter of undertaking by the First Defendant and the initial instructions to ESI to transfer the property did not have the effect of waiving the requirement to provide a bank guarantee, because of the provisions of clause 20 (non-waiver clause) of the agreement. In any event a waiver for the provision to furnish of a bank guarantee would have the effect of making the transaction a donation, which is contrary to the intention of the parties.

[41] Having found that the Plaintiff has not complied with its obligation to provide the First Defendant with a bank or financial institution guarantee contemplated under clause 2.2.2 of the sale agreement, it therefore follows that the First Defendant was entitled to cancel the sale agreement, and did lawfully cancel the agreement in terms of the provisions of the sale agreement.



### Comments on the conduct of the First Defendant

[42] It is common ground that the First Defendant is a statutory body having power, among other things, to alienate immovable property which constitutes public assets. There are some disturbing facts which arose during the hearing of this matter. The Plaintiff had tendered to buy from the First Defendant the property in question. The property was allocated by the First Defendant to the Plaintiff for purchase, on certain specified written terms. One of such terms was that the Plaintiff would furnish the First Defendant a written proof of a loan approval from a financial institution. Failing such proof of a loan approval, the Plaintiff would not be permitted to enter into a sale agreement with the First Defendant in respect of the purchase of the property in question.

[43] However, the above condition appears to have been orally altered by the First Defendant, and the Plaintiff was allowed to execute the sale agreement without furnishing the required proof of a loan approval. There is no indication as to what the First Defendant had considered, prior to allowing the aforesaid oral waiver for proof of a loan approval. From all appearances, the Plaintiff ought not to have been allowed to progress to execute the sale agreement, in the first place.

[44] As if the foregoing was not bad enough, on the 21 September 2015, the Plaintiff furnishes the First Defendant the letter of undertaking from ESI referred to above. I have already held that such letter of undertaking clearly does not guarantee payment of the purchase price required in terms of clause 2.2.2 of the sale agreement. Indeed a letter of undertaking or a bank guarantee that is payable subject to availability of funds, does not guarantee payment against registration of a property into the name of a purchaser. Yet the same letter of undertaking was apparently regarded, initially, as good guarantee, and lawyers were, initially, instructed to proceed with the registration of the transfer of the property.

[45] What played out in this matter could validly be understood, if it could be explained as a once-off incident. However, according to the evidence of Mr Shipiki, as was briefly sketched in paragraph [23] hereof, it is an adopted practice that the First Defendant accepts and acts on letters of understanding or guarantees of the kind as the one referred to above.

[46] The practice of the kind referred to above is very alarming and disturbing indeed, more so because it involves dealing with public assets, a matter in which all tax-payers and rate-payers have an interest. Dealing with immovable property in such a cavalier fashion amounts to playing *ducks and drakes* with public assets. It is abdication of the responsibility that the public reposes in the First Defendant.

[47] For the foregoing reasons, I would direct the Registrar of this court to refer a copy of this judgment to the First Defendant in the hope that remedial action is taken to ensure that the practice adopted by the First Defendant, as set out in para [45] hereof, involving acceptance of letter of undertaking or any guarantee, payable “*subject to availability of funds*” is ceased forthwith.

### Conclusion

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

1. The Plaintiff's claim is dismissed.
2. The Plaintiff is ordered to pay the costs of the Third Defendant, such costs to include costs of one instructing and one instructed counsel.
3. The Registrar of this court is directed to forward a copy of this judgment to the First Defendant, to looking into the concerns raised in paragraph 47 of this judgment.

4. The matter is removed from the roll and regarded finalised.

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B Usiku  
Judge

## APPEARENCES:

PLAINTIFF

E Schimming-Chase (assisted by S Vlieghe)  
instructed by Koep & Partners, Windhoek

THIRD DEFENDANT

CE Van Der Westhuizen (assisted by AJ Malherbe)  
instructed by Dr Weder Kauta & Hoveka Inc,  
Windhoek