

REPUBLIC OF NAMIBIA



**HIGH COURT OF NAMIBIA MAIN DIVISION, WINDHOEK
RULING: APPLICATION FOR SUMMARY JUDGMENT**

Case no: HC-MD-CIV-ACT-MAT-2016/03103

In the matter between:

STANDARD BANK NAMIBIA LIMITED

APPLICANT

and

LINUS TUZEERENDO NEUMBO

RESPONDENT

Neutral citation: *Standard Bank Namibia Limited v Neumbo* (HC-MD-CIV-ACT-CON-2016/03103) [2018] NAHCMD 224 (19 July 2018)

Coram: USIKU, J

Heard on: 19 July 2018

Delivered: 19 July 2018

ORDER

1. Applicant's application for summary judgment is struck from the roll on account of non-compliance with the provisions of Rule 32(9) and (10).
2. Applicant is ordered to pay the costs of the Respondent.
3. The matter is postponed to 03 October 2018 at 15:15 for Case Planning Conference.
4. The parties are directed to file a joint case planning report on or before 26 September 2018.

REASONS IN TERMS OF PRACTICE DIRECTIONS 61 (9)

USIKU, J:

Introduction

[1] In so far as it is relevant to the "*point in limine*" raised by the Respondent, the chronology of the matter is set out hereunder.

[2] On 28 October 2016 the Applicant filed its application for summary judgment.

[3] On 15 November 2016 the Applicant filed a copy of a letter dated 10 November 2016 addressed to the Respondent, in which the Applicant asked the Respondent to indicate not later than 15 November 2016, any proposals of how the Respondent

wished to amicably resolve the matter. It appears this letter was forwarded to the Respondent by post, though no proof of posting has been furnished.

[4] By court order dated the 16 November 2016, the parties were directed to comply with the provisions of Rule 32(9) and (10), by 25 November 2016.

[5] On 25 November 2016 the Applicant filed a copy of a letter dated 25 November 2016, having the same content as the letter dated 10 November 2016, except that this letter asked the Respondent to indicate not later than 07 December 2016, how the Respondent wished to amicably resolve the matter.

[6] By court order dated the 08 February 2017, the Applicant was granted leave to serve the application for summary judgment on Respondent by e-mail. The Respondent was ordered to file an opposing affidavit within 14 days of the service of the application for summary judgment.

[7] On 20 February 2017 the Respondent filed notice of opposition to summary judgment together with other documents.

[8] By court order dated the 15 March 2017 the court directed that the matter be postponed to 22 June 2017 for hearing of the application for summary judgment.

[9] The subsequent developments are not relevant for the present purposes.

Point in *limine*

[10] The issue for determination now is whether the Applicant complied with the provisions of Rule 32(9) and (10) prior to launching the application for summary judgment.

[11] Rule 32(9) requires that a party wishing to bring an interlocutory proceeding “must” before launching it, seek an amicable resolution thereof with the other party and only after the parties have failed to resolve the dispute may such proceeding be delivered for adjudication by court.

[12] Rule 32(10) provides that a party bringing an interlocutory proceeding “must” before instituting the proceeding, file with the Registrar details of the steps taken to have the matter resolved amicably.

[13] As it is apparent from the facts outlined above, the application for summary judgment was already filed for adjudication on 28 October 2016. The applicant did not seek an amicable resolution of the dispute before instituting the application for summary judgment.

[14] The Applicant did not file details of the steps taken to have the matter resolved amicably.

[15] The point in *limine* therefore stands to be upheld with costs. The costs in general, follow the event and there is no reason to depart from the rule.

[16] In result, I make the order as more fully set out at page 2 hereof.

B Usiku
Judge

APPEARANCES

APPLICANT/PLAINTIFF:

M Kuzeeko
of Weder, Kauta & Hoveka Inc.,
Windhoek

RESPONDENT/DEFENDANT:

NS Enkali
of Kadhila Amoomo Legal Practitioners,
Windhoek