

REPUBLIC OF NAMIBIA



HIGH COURT OF NAMIBIA MAIN DIVISION, WINDHOEK

JUDGMENT

Case no: HC-MD-CIV-ACT-CON-2017/02741

In the matter between:

STANDARD BANK NAMIBIA

PLAINTIFF

and

OTTO APISAY

DEFENDANT

Neutral citation: *Standard Bank Namibia v Apisay* (HC-MD-CIV-ACT-CON 2017/02741) [2018] NAHCMD 273 (7 September 2018)

Coram: USIKU, J

Heard on: 16 May 2018 and 04 July 2018

Delivered: 07 September 2018

Flynote: Practice – Judgment and orders – Default judgment – Cause of action based on a money-lending claim – Particulars of claim alleging that Plaintiff is holder of a mortgage bond executed in Plaintiff's favour in respect of monies lent and advanced by Plaintiff to Defendant – No indication whether this loan agreement was in writing or oral – No loan agreement attached to the particulars of claim but Plaintiff attached a registered mortgage bond – Court holding that in a claim based on money-lending, the loan agreement is the basis for the claim, not the mortgage bond – Mortgage bond is proof that Plaintiff's claim has been secured by way of mortgage bond over immovable property of Defendant.

Failure to comply with requirements of Rule 45(7) – Plaintiff obliged to furnish particulars mentioned in Rule 45(7) whenever a contract forms part of the cause of action – Where written agreement is basis of the cause of action a copy of the written agreement must be attached to the combined summons. Application for default judgment refused.

Summary: The Plaintiff lent money to the Defendant. The loan was secured by a mortgage bond over immovable property. The Defendant allegedly defaulted on due payment of monthly installments owing under the loan. The Plaintiff claims by summons the outstanding capital amount, with interest together with costs. There is no indication in the summons whether the loan agreement is in writing or oral. No loan agreement is attached to the summons but the Plaintiff attached copy of the mortgage bond. Court refused to grant default judgment.

ORDER

1. The Plaintiff's application for default judgment is refused;
2. The Plaintiff is allowed opportunity to amend and/or correct its particulars of claim, if is so advised;

3. Should the Plaintiff decide to amend its particulars of claim:
 - (a) the Plaintiff is directed to comply with the provisions of Rule 32(9) and (10) on or before 29 September 2018;
 - (b) should the matter not be amicably resolved, the Plaintiff is directed to file its notice to amend on or before 05 October 2018;
 - (c) the Defendant should, if so inclined, file a notice of objection, if any, on or before the 19 October 2018;
 - (d) if no objection is filed, the Plaintiff must deliver its amended particulars of claim on or before 26 October 2018;
 - (e) if an objection is filed the Plaintiff must deliver its application for amendment on or before 26 October 2018;
4. The matter is postponed to 14 November 2018 at 15:15 for status hearing;
5. The parties are required to file a joint status report on or before 08 November 2018;
6. I make no order as to costs in respect to the application for default judgment;
7. The costs incurred as a result of amendment or correction to the particulars of claim should be borne by the Plaintiff itself.

JUDGMENT

USIKU J:

Introduction

[1] In this matter, Standard Bank Namibia Limited, (“the Plaintiff”) seeks default judgment against Otto Apisay, (“the Defendant”), for:

- (a) payment of N\$ 898 246.93;
- (b) interest thereon at the rate of 10.25% per annum as from 12 June 2018 to date of final payment;
- (c) costs of suit on the scale as between attorney own client;
- (d) further or alternative relief.

[2] This matter came before me as an inactive matter, in terms of the provisions of Rule 132(4). Notice was given to the parties to appear before court on the 16 May 2018. On the 16 May 2018 the Legal Practitioner representing the Defendant indicated that he was withdrawing as counsel of record for the Defendant. The Legal Practitioner for the Plaintiff requested that the matter be postponed to allow the Plaintiff an opportunity to apply for default judgment. At that point the Plaintiff had filed a copy of a ‘settlement agreement’, at that stage signed only by the Defendant, dated 14 November 2017.

[3] On that day, (the 16 May 2018) the court gave an order in the following terms:

‘ Having heard Ms. Quinn, on behalf of the Plaintiff and Mr. Davis, on behalf of the Defendant and having read the pleadings for HC-MD-CIV-ACT-CON-2017/02741 and other documents filed of record:

IT IS RECORDED THAT:

The counsel for the Defendant has withdrawn as the Defendant's legal representative and still awaits the return of service from the Deputy-Sheriff.

IT IS ORDERED THAT:

1. The case is postponed to 04/07/2018 at 15:15 for the hearing of Plaintiff's application for default judgment.
2. Plaintiff is directed to file his application for Default Judgment on or before the 27/06/2018.
3. Together with the application referred to in order 2 above, the Plaintiff must also file brief heads or argument, addressing the following issues:
 - a) to the extent that the Plaintiff relies on a loan agreement for its claim: whether the particulars of claim are not excipiable for non-compliance with Rule 45(7): in that they do not state whether the agreement is written or oral, when, where and by whom it was concluded, an if written, a copy thereof be annexed to the pleading.
 - b) to the extent that the Plaintiff relies on the mortgage bond as embodying the loan agreement for the purpose of Rule 45: Plaintiff is directed to set out authorities supporting such proposition/argument.'

[4] The Plaintiff filed its application for default judgment seeking for an order as set out in paragraph 1 hereof above. Together with the application for default judgment, the Plaintiff also filed heads of argument as directed in paragraph 3 of the abovementioned order. The Plaintiff also attached to the application for default judgment a copy of a 'settlement agreement', this time signed by both parties dated the 23 November 2017. The content of this agreement is dealt with at paragraph 30 herein.

The particulars of claim

[5] In its particulars of the claim, the Plaintiff, after citing the parties, makes the following averments:

- '3. Plaintiff is the holder of a First Mortgage Bond over the immovable property, to wit, Erf No 1392(A Portion of Erf 1479), Hochlandpark in the Municipality of Windhoek, Registration Division "K", measuring 424 (Four Two Four) square meters, and held by Deed of Transfrer T3855/2007, hereinafter "the immovable property".
4. The said First Bond was executed in Plaintiff's favour in respect of monies lent and advanced by the Plaintiff to the Defendant on a Home Loan Account, as follows:-
 - 4.1 A First Mortgage Bond, Number B 6889/2010, for the amount of N\$ 1 000 000.00 plus an additional amount of N\$ 250 000.00 (a certified copy of which is annexed hereto as annexure "A");
5. The terms and conditions set out in the said Mortgage Bond are specifically incorporated herein. The material terms and conditions of the Mortgage Bond are as follows:-
 - 5.1 Defendant would repay the loan amount together with interest as agreed in monthly instalments;
 - 5.2 A certificate signed by a Manager or Administrator of the Plaintiff shall constitute *prima facie* proof of the amount owing to the Plaintiff from time to time.
 - 5.3 The Defendant may not let or give up occupation of the mortgage property without the consent of the Plaintiff.
 - 5.4 In the event of the Defendant breaching the terms of the mortgage bond:
 - 5.4.1 The full amount outstanding would immediately become due and payable, together with compound interest as agreed;

5.4.2 The Plaintiff may institute proceedings for the recovery thereof and seek an order declaring the mortgaged property executable;

5.4.3 The Defendant would be liable for costs on an attorney own client scale incurred by the Plaintiff in recovery of any amounts due to it by the Defendant.

6. The immovable property is not the primary residence of the Defendant nor is it leased to a third party.
7. The Defendant is in arrears with his repayment obligations towards the Plaintiff and this in breach of his obligations towards Plaintiff since July 2017.
8. The Defendant is therefore indebted to the Plaintiff in the amount of **N\$ 914 647.56** plus interest thereon at the rate of 10.50% per annum as from 20 July 2017 to date of final payment and as per the certificate of indebtedness annexed hereto and marked annexure "**B**".
9. Despite demand, Defendant has failed and or neglected to pay the aforesaid amounts to Plaintiff despite same being due and payable.

WHEREFORE PLAINTIFF PRAYS FOR JUDGMENT AGAINST DEFENDANT FOR:

1. payment of N\$ 914 647.56.
2. interest thereon at the rate of 10.25% per annum as from 12 June 2018 to date of final payment;
3. costs of suit on the scale as between attorney own client.
4. further or alternative relief.'

[6] In terms of paragraph 4 of the particulars of claim quoted above, reference is made to a mortgage Bond “*executed in Plaintiff’s favour in respect of monies lent and advanced by the Plaintiff to the Defendant on a Home Loan Account*”. Furthermore paragraph 5.1 of the particulars of claim refers to the Defendant having undertaken to repay the loan amount with interest as *agreed* in monthly instalments. There is no indication whether this loan agreement was in writing or was concluded orally. In terms of paragraph 7 of the particulars of claim, the Defendant “*is in arrears with his repayment obligations towards the Plaintiff*”.

[7] There is no loan agreement attached to the particulars of claim. However, the Plaintiff has attached to the particulars of claim a registered mortgage bond in its favour for the capital amount of N\$ 1,000,000.

Plaintiff’s response to issues raised by the court

[8] In its response to the question posed by the court as set out in paragraph 3 hereof, whether the particulars of claim are not excipiable for non-compliance with Rule 45(7) in that they do not state whether the agreement was written or oral, when, where and by whom it was concluded and if written, a copy thereof be annexed to the pleading, the Plaintiff responded as follows:

‘3.2 For its cause of action plaintiff relies on a mortgage bond incorporating a loan agreement. Geier, J in *China Henan International Cooperation (Pty) Ltd v De Klerk and Another* 2014 (2) NR 517 (HC) previously had the occasion to deal with the same issue. Although this case makes reference to rule 18(6) of the old rules of the High Court, it corresponds with rule 45(7) of the new Rules of the High Court.

3.3 The Court held that the non-compliance with rule 18(6) by a plaintiff is not necessarily fatal to a summons and accordingly held at 526A – E that-

“It surely is the requirements of the substantive law which determine whether or not valid cause of action has been made out and not the particular compliance or non-compliance with the rules of court.

[19] Put differently: the failure to plead certain *facta probantia* – for instance in breach of rule 18(6) – does not necessarily and always result in a situation that no legal conclusion can be drawn from the pleaded facts, particularly if the remainder of the pleaded facts cover all the essential (material) allegations imposed by the substantive law for a valid cause of action.

[20] To illustrate further: the failure to allege where a contract was concluded does not detract from the veracity of the remainder of the material allegations, where, as in this instance, it was materially alleged that an agreement was concluded between the parties cited together with the relied upon pleaded terms.

[21] In the same vein: the failure to allege who acted on behalf of the parties, at the relevant time, does not detract from the veracity of the material allegations underscoring the relied upon cause of action, namely that a contract, with the pleaded terms, now relied upon, was concluded between the parties cited in the summons.

[22] It emerges that the omitted particulars constitute *facta probantia*, ie facts which are required to prove the material *facta probanda*, and that an agreement of lease was concluded between the cited parties together with the relied upon terms.”

3.4 Resultantly, plaintiff’s non-compliance with rule 45(5), does not by that very fact, render the particulars of claim excipiable.’

[9] In regard to the second point set out in the paragraph 3(b) of the court order referred to in para [3] hereof, directing the Plaintiff to *support its proposition with authorities* to the extent that the Plaintiff relies on the mortgage bond as *the contract* for the purpose of Rule 45(7), the Plaintiff responded as follows:

‘4.1 The mortgage bond on which plaintiff relies in its particulars of claim incorporates and acknowledgement of debt.

- 4.2 A party in possession of an acknowledgement of debt arising from an underlying set of facts in itself will support a claim and a party is entitled to sue whether on the acknowledgment of debt itself or on the underlying cause of action which gave rise to the former. In cases where the acknowledgement is a novation or a compromise of the underlying cause of action, only the acknowledgment of debt may be sued upon.

See: *Amunyela v Arovin Property Developers* (I 2486/2011) [2013] NAHCMD 146 (31 May 2013 at par 18.

- 4.3 Plaintiff is therefore entitled to sue on the mortgage bond alone without reference to an underlying loan agreement.
- 4.4 Insofar as non-compliance with rule 45(7) is concerned, similar principles are applicable as are set out above in addressing the first issue.'

[10] The Plaintiff advanced further argument in the following terms:

'5 THE APPLICATION FOR DEFAULT JUDGMENT – BY CONSENT

- 5.1 Plaintiff's entitlement to apply for default judgment is not procedural in nature i.e because the defendant failed to enter appearance to defend, or because the defendant is in default of delivering a plea within the time period allowed as contemplated in rule 15.
- 5.2 Plaintiff's application for default judgment is premised on a settlement agreement entered into between the parties on 23 November 2017, in terms whereof the defendant consented to. Clause 3 (ii) of the settlement agreement provides that "*plaintiff shall be entitled to obtain judgment on an unopposed basis for such amount as stated by the Plaintiff in a certificate of indebtedness.*"
- 5.3 The judgement sought is a judgment by consent.

6. In conclusion, it is respectfully submitted that, plaintiff's application is properly before the court and given the questions posed by the Court, nothing prevents the court from granting the default judgment.'

Analysis

[11] In the present case the Plaintiff argues that it is entitled to the relief that it seeks based on the mortgage bond attached to its particulars of claim. In *Klerck N.O v Van Zyl and Maritz 1989(4) SA 263 at 275 G – 276 H*, Kroon J made the following remarks:

'A convenient starting point for the consideration of this issue is an analysis of the nature of the real right which is constituted by a mortgage bond. A mortgage bond may be defined as an instrument hypothecating landed property to secure a debt, existing or future. *Lief NO v Dettmann 1964 (2) SA 252(A) at 259B; Thienhaus NO v Metje & Ziegler Ltd and Another 1965 (3) SA 25 (A) at 31F. At 259E of the former case the following appears:*

"The only real rights in favour of the mortgage created by the registration of a bond are rights in respect of the mortgaged property, eg the right to restrain its alienation and a right to claim a preference in respect of its proceeds on insolvency of the mortgagor. The real rights, however, can only exist in respect of a debt, existing or future, and it follows that they cannot divorced from the debt secured by them."

At 264 and 265 it was said that a mortgage bond is an acknowledgment of debt and at the same time an instrument hypothecating landed property and that the object of a mortgage bond is not merely hypothecation, but the settlement of the terms of the obligation it secures. See, too, *Thienhaus' case supra* at 38. It follows therefore that the real right created by a mortgage bond is accessory in nature and is dependent for its existence on the existence of the obligation which it secures.

If there is no valid principal obligation for the mortgage bond to secure, there can be no valid mortgage bond and no real right of security in the hands of the mortgagee. See too, *Kilburn v Estate Kilburn 1931 AD 501* where the following was said at 505-6:

“....(Y)ou cannot have a settlement of a security apart from the thing which is secured, be it a money debt or the performance of an act. The settlement of a security divorced from an obligation which it secures seems to me meaningless....

It is therefore clear that by our law there must be a legal or natural obligation to which the hypothecation is accessory. If there is no obligation whatever there can be no hypothecation giving rise to a substantive claim. Now the court below has found as a fact that there was no serious promise of £500 and no intention to pay the wife that sum, but that the whole intention of the spouses was that the wife should claim £500 if and when the husband became insolvent. There was therefore no obligation secured by this bond, and therefore in a *concursum creditorium* the appellant cannot claim on the bond.”

Reference may further be had to *Thienhaus'* case *supra* at 32 where, after stating, with reference to *Kilburn's* case *supra*, that it is clear that a mortgage bond as a deed of hypothecation must relate to some obligation, Williamson JA added:

“If no a *concursum creditorum* a mortgagee, or a pledgee fails to establish an enforceable claim which it was intended should be secured by the hypothecation, the bond, or the pledge, as the case may be, falls away”.

At 43 and 44, in the minority judgment of Wessels JA, the following passages appear:

“When the mortgagor causes a mortgage bond to be registered in favour of the mortgagee he does so to give effect to an antecedent agreement between them – which may be either in writing or verbal – in terms of which the former bound himself to grant to the latter, as security for a debt, a real right in the immovable property concerned....

It is of the essence of the real right which is constituted by the registration of a mortgage bond that it should be related to a debt, and the substantial reason why the antecedent agreement must of necessity refer to the debt which it is intended to secure is so that the nature and extent (ie the content) of the real right, which it is intended to constitute by the registration of a mortgage bond, may be exactly determined. It follows from this that the obligation resting upon the debtor is to effect the constitution of a real right in the immovable property concerned in favour of the creditor in accordance with the definition thereof in the agreement in question.”

Although these last two passages appear in the minority judgment and in a context different from that which obtains in *casu*, reference to the principles set out therein is apposite in this judgment. Reference may finally be had to Wille *Mortgage and Pledge* 3rd ed at 4 and Lubbe on 'Mortgage' in Joubert (ed) *Law of South Africa* vol 17 para 398, and the authorities there cited.'

[12] The abovementioned principles were cited with approval in *Absa Bank Limited v Haynes N.O. and Others* 2013 (3619/2013) (12 December 2013) at para 10) (a judgment of the High Court of South Africa, Free State Division, Bloemfontein); *Standard Bank of South Africa Ltd v Gordon and other* [2011] ZAGPJHC 114 2011/6477 (21 September 2011) at paras 9 and 10 and *Absa Bank Limited v Studdard and Another* (2011/24206) [2016] ZAGPJHC 26 (13 March 2012) at para 5. Those principles are valid and I support them.

[13] Applying the abovementioned principles to the matter at hand, a plaintiff's cause of action in a claim based on a money-lending transaction is not the registered *mortgage bond*, but the *loan agreement*. The mortgage bond is an instrument hypothecating landed property and constitutes proof that the Plaintiff's claim has been secured over the immovable property of the Defendant. It therefore follows that the real right created by a mortgage bond is accessory and dependent for its existence on the existence of the obligation which it secures.

[14] I am of the view that, *in casu*, the mortgage bond in question makes it clear that it is not the instrument creating the debt of the Defendant. It is a mortgage bond to cover the indebtedness of the Defendant arising from money lent or advanced or to be lent or advanced, pursuant to an agreement of loan. The *mortgagor-clause* (at the top of page 2 of the Bond) and the *acknowledgment-clause* (paragraph 1 of the Bond) makes that clear. The Plaintiff appears to argue that the mortgage bond in question incorporates a "loan agreement". I do not see a loan agreement executed by the parties which is incorporated in the mortgage bond in question. This argument therefore stands to be rejected.

[15] The mortgage bond should be attached to the particulars of claim if the plaintiff requires an order in terms of whereof the immovable property is to be declared specially executable.

The underlying obligation: loan agreement

[16] On the pleadings as they stand, I am of the opinion that the Plaintiff relies, for its cause of action on a contract (a loan agreement), even though the Plaintiff in argument attempts to disguise that cause of action as something else. To put it differently, in terms of the Plaintiff's particulars of claim, its case could be summarised as follows:

- (a) there was a loan agreement;
- (b) money was actually advanced in terms of that agreement;
- (c) the loan is repayable (due and owing);
- (d) the defendant refuses and/or fails to pay back the loan amount.

[17] The Plaintiff contends that its cause of action is based on an acknowledgement of debt contained in the mortgage bond. Normally, where a plaintiff claims payment of money in terms of an acknowledgement of debt, the following averments are made in the particulars of claim:

- (a) the relevant provisions of the acknowledgement of debt, signed by the defendant,
- (b) the amount specified in the acknowledgement of debt (or part thereof) has become due and payable;
- (c) the defendant refuses and/or fails to pay the amount.

[18] It is common knowledge that an acknowledgement of debt is not a money-lending agreement and that it is a separate cause of action.

[19] There is nowhere in the particulars of claim where it is expressly (or by necessary implication) stated that the Defendant had executed an acknowledgement of debt in favour of the Plaintiff, and that the Plaintiff is proceeding against the Defendant on the basis of that acknowledgement of debt.

[20] In the case of *Amunyela v Arovin Property Developers* (supra) which is cited by the Plaintiff, the court found that on the pleadings, the Plaintiff's case was founded on an acknowledgement of debt and not on the underlying cause relating to the consulting work that was done. The *Amunyela's* case therefore cannot assist the Plaintiff in this matter. In the present matter, the cause of action based on an acknowledgement of debt is not borne out by the summons and is therefore rejected.

Requirements when Plaintiff's pleading relies on a contract

[21] Rule 45(7) provides as follows:

'A party who in his or her pleading relies on a contract must state whether the contract is written or oral and when, where and by whom it was concluded and if the contract is written a true copy thereof or the part relied on in the pleading must be annexed to the pleading.'

[22] A plaintiff "*relies upon a contract*" when he uses it as a "*link in the chain of his cause of action*."¹ Such plaintiff is therefore obliged to furnish the particulars set out in Rule 45(7) whenever a contract forms part of the cause of action put forth by him.²

¹ *Van Tonder v Western Credit Ltd.* 1996(1) SA 189 (C) at 193H.

² *South African Railways and Harbours v Deal Enterprises Pty. Ltd.* 1975 93) SA 944(W) at 953A.

[23] If a pleading does not comply with the requirements of Rule 45(7), the prejudice required for the setting aside of the pleading in terms of Rule 61 has prima facie been established.³

[24] Plaintiff's counsel contends that that non-compliance with *Rule 45(7)* is not necessarily fatal to the summons as long as such summons set out a valid cause of action. She relies on *China Henan International Cooperation Pty Ltd v De Klerk and Another 2014 (2) NR 517*.

[25] I am of the view that the present case is distinguishable from the *China Henan's* case, in the sense that in the latter case the particulars of claim disclosed that:

- (a) the contract relied on was an oral lease agreement, and
- (b) disclosed "when" the agreement was concluded.

However the agreement was silent as to:

- (a) where and
- (b) by whom the agreement was concluded.

[26] The court in the *China Henan's* case therefore, held, correctly in my view, that despite the non-disclosed facts, *the remainder of the pleaded facts*, in the circumstances of that particular case, covered all the material allegations required to make out a cause of action.

[27] In the present case, there is *complete non-compliance* with the provisions of Rule 45(7). I do not understand the principles in the *China Henan's* case to mean that a plaintiff who in his pleading relies upon a contract need not comply with the

³ *Absa Bank Limited v Studdard and Another (2011/24206) [2012] ZAGPJHC 26(13 March 2012)* at para 19.

requirements of Rule 45(7) at all. In my opinion, where a plaintiff relies upon a contract as part of his cause of action, the defendant and the court are *entitled* to the particulars mentioned in the Rule 45(7) as of right.

[28] If, for example, the contract relied upon by the Plaintiff in the instant case is a written contract, the attachment thereof to the particulars of claim is necessary to disclose a cause of action. In the absence of such document being attached, the court cannot be certain that judgment ought properly to be granted in favour of the Plaintiff.

[29] In addition, counsel for the Plaintiff argues that the Plaintiff's application for default judgment is premised on the settlement agreement dated the 23 November 2017 in terms of which the parties agreed that the Plaintiff shall be entitled to obtain default judgment for such amount as stated by the Plaintiff in a certificate of indebtedness.

[30] The settlement agreement referred to above was attached to the application for default judgment. It provides, among other things, that:

- (a) the defendant shall pay an amount of not less than N\$ 7 500 per month from 30 October 2017, towards the arrear amount,
- (b) the Defendant shall pay N\$ 10 384.28 per month towards the home loan account, as from 30 October 2017,
- (c) if the Defendant defaults on the above payments, the total amount due shall become payable immediately,
- (d) the Plaintiff is entitled to obtain judgment on an unopposed basis for the amount stated by the Plaintiff in a certificate of indebtedness,
- (e) the parties agreed that this agreement be made an order of court.

[31] At the present, the Plaintiff also argues that it seeks from the court an order for judgment in the terms as set out in para [1] hereof, on the basis that the Defendant consents to judgment in favour of the Plaintiff. From the content of this agreement it is clear that the intention of the parties was to settle the dispute between them on the terms as set out in the agreement. The parties also intended to make that settlement agreement an order of court. If the Defendant defaults on any of the terms of the agreement, the Plaintiff is entitled to approach the court on basis of breach of the agreement. The agreement in question does not amount to an unequivocal consent to judgment being granted on the claim contained in the present summons, as contemplated under Rule 62.

[32] I refuse to grant judgment for the Plaintiff on the basis of this settlement agreement for the reason that the terms of the agreement do not lend themselves to the interpretation that the Defendant has consented to judgment being granted on the claim as contained in the summons.

Conclusion

[33] In conclusion, the Plaintiff's summons lack compliance with the requirements set in Rule 45(7) and therefore does not disclose a cause of action. The result is that the Plaintiff cannot succeed on the papers as they stand.

[34] In the circumstances of the case I consider it just *not* to dismiss the application outright. I would allow the Plaintiff opportunity to amend and/or correct the defects in its particulars of claim, if so inclined.

[35] In the result I make the following order:

- a) The Plaintiff's application for default judgment is refused;

- b) The Plaintiff is allowed opportunity to amend and/or correct its particulars of claim, if it is so advised;
- c) Should the Plaintiff decide to amend its particulars of claim:
 - (i) the Plaintiff is directed to comply with the provisions of Rule 32(9) and (10) on or before 29 September 2018;
 - (ii) should the matter not be amicably resolved, the Plaintiff is directed to file its notice to amend on or before 05 October 2018;
 - (iii) the Defendant should, if so inclined, file a notice of objection, if any, on or before the 19 October 2018.
 - (iv) if no objection is filed, the Plaintiff must deliver its amended particulars of claim on or before 26 October 2018;
 - (v) if an objection is filed the Plaintiff must deliver its application for amendment on or before 26 October 2018;
- d) The matter is postponed to 14 November 2018 at 15:15 for status hearing;
- e) The parties are required to file a joint status report on or before 08 November 2018;
- f) I make no order as to costs in respect of the default judgment application;
- g) The costs incurred as a result of amendment or correction to the particulars of claim should be borne by the Plaintiff itself.

B Usiku
Judge

APPEARENCES:

PLAINTIFF: Y Cambell (with her C Quinn)
instructed by Fisher Quarmby and Pfeifer, Windhoek

DEFENDANT: No Appearance