

**REPUBLIC OF NAMIBIA**



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

**RULING**

Case no: HC-MD-CIV-ACT-MAT-2017/00121

In the matter between:

**WINDHOEK RENOVATIONS CC**

**PLAINTIFF**

And

**SOUTHERN AFRICA CIVILS CC**

**RESPONDENT**

**Neutral citation:** *Windhoek Renovation CC v Southern Africa Civils CC* (HC-MD-CIV-ACT-CON- 2017/00121) [2018] NAHCMD 280 (6 September 2018)

**Coram:** USIKU, J

**Heard on:** 06 September 2018

**Delivered:** 06 September 2018

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**ORDER**

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1. The application for absolution from the instance is dismissed.
2. The Defendant is ordered to pay the Plaintiff's costs, such costs to include costs occasioned by the appointment of one instructing and one instructed counsel.
3. The matter is postponed to 20 September 2018 at 08:30 in chambers for allocating dates for the continuation of the trial.

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**REASONS IN TERMS OF PRACTICE DIRECTIONS 61 (9)**

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USIKU J:

[1] These proceedings concern an application by the Defendant for an order for absolution from the instance. In general the Defendant argues that the Plaintiff has failed to discharge the overall onus resting on the Plaintiff to prove its case.

[2] The test for granting absolution is: whether the Plaintiff adduced sufficient evidence upon which a court might find in his favour. In general, the court will refuse absolution if there are several reasonable inferences or possibilities arising out of the evidence, one of which favour the Plaintiff's version of events.

[3] In the present matter evidence has been led on behalf of the Plaintiff that the Plaintiff and the Defendant had entered into an agreement relating to equipment hire and that payment of money was to be made in respect of such hire. There is also evidence led that equipment was actually hired and that payment for such hire is due and payable by the Defendant.

[4] The Defendant in its application for absolution contends, among other things, that:

- (a) it was conceded during evidence that the Plaintiff's policy is that no machinery leaves Plaintiff's premises without written order, and no written order was proved in respect of the machinery in question, and
- (b) there is no evidence supporting the amounts claimed by the Plaintiff.

[5] In my view, the existence or non-existence of the policy that no machinery is to leave Plaintiff's premises without written order by itself will not warrant the granting of an absolution application, in the circumstances. At this stage the crucial issue is whether evidence of the hiring and use of the equipment by the Defendant was put forth by the Plaintiff. At the present, there is evidence by a machine operator that he had indeed operated the relevant machinery allegedly hired by the Defendant during the period in question. Evidence to that effect presupposes agreement of some sort between the parties.

[6] Having considered the evidence adduced by the Plaintiff, I am of the opinion that a court exercising its mind reasonably could find for the Plaintiff in his claim.

[7] For the foregoing reasons, the application for absolution stands to be dismissed with costs.

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

1. The application for absolution from the instance is dismissed.

2. The Defendant is ordered to pay the Plaintiff's costs, such costs to include costs occasioned by the appointment of one instructing and one instructed counsel.
  
3. The matter is postponed to **20 September 2018** at **08:30** in chambers for allocating dates for the continuation of the trial.

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B Usiku  
Judge

## APPEARANCES

PLAINTIFF:

C Van der Westhuizen

instructed by Dr Weder, Kauta & Hoveka Inc.  
Windhoek

DEFENDANT:

N Mhata

of Sisa Namandje Inc, Windhoek