

**REPUBLIC OF NAMIBIA**



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

**RULING**

Case no: HC-MD-CIV-ACT-MAT-2018/00941

In the matter between:

**ULTIMATE SAFARIS (PTY) LTD**

**PLAINTIFF**

and

**JIM JEREMY GARISEB**

**RESPONDENT**

**Neutral citation:** *Ultimate Safaris (Pty) Ltd v Gariseb* (HC-MD-CIV-ACT-CON-2018/00941) [2018] NAHCMD 281 (7 September 2018)

**Coram:** USIKU, J

**Heard on:** 07 September 2018

**Delivered:** 07 September 2018

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**ORDER**

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Judgment is hereby granted in favour of the Plaintiff against the Defendant in the following terms:

1. Payment in the amount of N\$ 171,186.44;
2. Payment in the amount of U\$ 5,436.26 or the Namibian Dollar equivalent thereof;
3. Interest on the aforesaid amounts at the rate of 20% per annum a *tempora morae* to date of final payment;
4. Costs of suit;
5. The matter is removed from the roll and regarded finalized.

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

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[1] In this matter, the Plaintiff seeks summary judgment, for payment in the amount of N\$ 171,816.44 and U\$ 5,436.26 or the Namibia Dollar equivalent thereof, interest on the above amounts plus costs of suit.

[2] On the date of the hearing of the application for summary judgment, there was no appearance on the part of counsel for the Defendant and the court allowed the Plaintiff to proceed presenting its application, in terms of Rule 68(b).

[3] I have read the papers as filed by both parties and have listened to oral arguments presented by counsel for the Plaintiff. I am satisfied that the application for

summary judgment meets the requirements set out in rule 60 (2) (a) and (b). The only issue that this court has to determine is whether the Defendant has disclosed a *bona fide* defence or a triable issue.

[4] In essence, the Plaintiff's case is that on the 03 January 2018 the Defendant (an employee of the plaintiff) did:

- (a) drive a motor vehicle (Toyota Land Cruiser with registration No. N99765 W: the property of the Plaintiff) without Plaintiff's consent,
- (b) while driving such motor vehicle, he veered the motor vehicle off the gravel road, and the vehicle collided through bushes, flipped on its side and sustained damage.

[5] In his answering affidavit the Defendant states he drove the motor vehicle in question with the consent of the Plaintiff and drove it within the scope of his employment. He averred that he veered the motor vehicle off the road into the bushes, in order to avoid hitting an impala that suddenly ran into the road.

[6] The Defendant does not specify the identity of the person who gave him the consent to drive the motor vehicle on the day in question. Furthermore, the Defendant does not specify the nature of the duties he was performing at the instance of the Plaintiff at the material time.

[7] The Defendant does not dispute that damage was occasioned to the motor vehicle, and also does not dispute the quantum of such damage.

[8] I am of the opinion that the Defendant has not raised a triable issue or *bona fide* defence in the circumstances of this case. The defence that the Defendant is required to raise, in terms of Rule 60 (5) (b) must disclose fully the nature, the grounds thereof and the material facts upon which he relies for such defence. Merely alleging consent

to drive the motor vehicle without specifying the identity of the individual giving the consent is not enough. Equally, alleging that Defendant was performing his duties, without specifying the nature of the duties he was executing, is not sufficient for the present purposes.

[9] If the Defendant does not fully disclose his defence of having been 'driving the motor vehicle with the owner's consent' or 'driving within the scope of his employment' and does not set out the material facts upon which he relies for his defence, then it follows that the Defendant had no business veering the motor vehicle off the road to avoid hitting impala(s) in the first instance. In other words, I am on the opinion that, veering a motor vehicle off the road to avoid hitting an impala, in circumstances where the vehicle is being driven without the owner's consent, does not constitute a *bona fide* defence or a triable issue.

[10] In the premises, I am of the view there is no basis upon which summary judgment can be refused in the circumstances of this matter. I accordingly grant summary judgment as prayed for as more fully set out in the order set out at the beginning hereof.

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B Usiku  
Judge

## APPEARANCES

PLAINTIFF: W Van Greunen  
of Köplinger Boltman, Windhoek

DEFENDANT: P Muluti  
of Muluti & Partners, Windhoek