

REPUBLIC OF NAMIBIA



HIGH COURT OF NAMIBIA MAIN DIVISION, WINDHOEK

RULING

Case no: HC-MD-CIV-ACT-OTH-2018/01411

In the matter between:

WUM PROPERTIES (PTY) LTD

PLAINTIFF

and

OBUZU INVESTMENT CC T/A LIQUID EVENTS NAMIBIA CC

DEFENDANT

Neutral citation: *Wum Properties (Pty) Ltd v Obuzu Investment CC t/a Liquid Events Namibia CC* (HC-MD-CIV-ACT-OTH-2018/01411) [2018] NAHCMD 353 (2 November 2018)

Coram: USIKU, J

Heard on: 02 November 2018

Delivered: 02 November 2018

Released: 07 November 2018

ORDER

1. The application for summary judgment is refused and the Defendant is granted leave to defend the action;
 2. The costs of this application are to be costs in the cause;
 3. The matter is postponed to the 19 November 2018 at 08h30, for Case Planning Conference
 4. The parties are directed to file a joint case plan on or before 15 November 2018.
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REASONS: PRACTICE DIRECTIONS 61 (9)

USIKU, J:

Introduction

[1] This is an opposed summary judgment application in which the Plaintiff seeks eviction of the Defendant from certain business premises.

[2] The Plaintiff's claim, as set out in the particulars of claim, is to the effect that there was a lease agreement between the parties. This lease agreement expired on 31 March 2018 and the Plaintiff was obliged to vacate the premises and re-deliver the premises to the Plaintiff on 31 March 2018. The Defendant has failed to do so and remains in unlawful occupation of the premises since 01 April 2018.

[3] After the Defendant entered an appearance to defend, the Plaintiff applied for summary judgment.

[4] In its opposing affidavit, the Defendant avers that it has been in occupation of the premises in question since April 2015 and has been conducting business thereon for an uninterrupted period in excess of three years. The Defendant argues that the Rent Ordinance No. 13 of 1977 applies to the relationship between the Defendant and the Plaintiff.

[5] The Defendant further contends that, in terms of section 32(1)(b) of the Rents Ordinance the Plaintiff was obliged to give the Defendant at least one year notice, to vacate the premises. The Plaintiff has not done so. Instead the Plaintiff gave the Defendant notice to vacate the premises on 14 November 2017, and such notice is not in accordance with the provisions of the Rents Ordinance and therefore invalid and of no legal consequence.

[6] The Defendant further argues that the lease agreement in question provides a “hold-over” provision and therefore a new agreement between the parties has come into being. I am of the view that this aspect is not material for the present purposes.

[7] The Defendant proceeds to argue that the Plaintiff had offered the Defendant lease for five years period and therefore the Plaintiff is estopped from denying that the lease agreement is still valid beyond the three years period after the signing thereof.

[8] In regard to the issue of non-compliance with the provisions of the Rents Ordinance, the Plaintiff argues simply that the Rents Ordinance is inapplicable, in view of Defendant’s admission of the lease agreement.

[9] The Plaintiff further contends that once the Defendant does not dispute the Plaintiff’s ownership of the premises, and admits its continued occupation, it will be for the Defendant to establish its right to be in occupation of the premises. The Defendant, so the Plaintiff argues, has not done so.

Analysis

[10] Section 32 (1) (a) of the Rents Ordinance provides that, when a lessor gives notice to a lessee to vacate business premises, such lessor shall give notice of at least one year, irrespective of whether the lease provides for a period of notice or not.

[11] The Defendant contends that it is entitled to the benefit of the provisions of section 32(1) (a). The Plaintiff argues that s.32 (1) (a) is inapplicable. No clear reasons are advanced for this proposition.

[12] Summary judgment is a drastic measure against a defendant and the court need only be satisfied in the exercise of its discretion to grant summary judgement, that on a balance of probabilities, the defendant raises a fairly triable or arguable issue.

[13] When it comes to issue of applicability or otherwise of section 23(1)(a) of the Rents Ordinance, I am of the view that, having regard to all the circumstances of the case, the Defendant has raised an issue, which is on the balance of probabilities, triable or arguable. It would not be proper or justified in the circumstances, in my view to shut the doors of the court in the face of the Defendant.

[14] For the foregoing reasons, I will decline granting summary judgment and will grant the Defendant leave to defend the matter.

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

- a) The application for summary judgment is refused and the Defendant is granted leave to defend the action;
- b) The costs of this application are to be costs in the cause;
- c) The matter is postponed to the 19 November 2018 at 08h30, for Case Planning Conference

- d) The parties are directed to file a joint case plan on or before 15 November 2018.

B Usiku

Judge

APPEARANCES:

PLAINTIFF

S Namandje
of Sisa Namandje & Co.Inc,
Windhoek

DEFENDANT

SS Makando
instructed by Muluti & Partners,
Windhoek