

REPUBLIC OF NAMIBIA



HIGH COURT OF NAMIBIA MAIN DIVISION, WINDHOEK

REASONS

Case no: I 2175/2004

I 1758/2007

In the matter between:

STANDARD BANK NAMIBIA LTD

PLAINTIFF

and

ATLANTIC MEAT MARKET (PTY) LTD

1ST DEFENDANT

MARKETLINK (NAMIBIA) (PTY) LTD

2ND DEFENDANT

Neutral citation: *Standard Bank Namibia v Atlantic Meat Market* (I 2175/2004, I 1758/2007) [2018] NAMCMD 61 (22 March 2018)

Coram: OOSTHUIZEN, J

Heard: 21 February 2018

Ruling: 12 March 2018

Delivered: 22 March 2018

THE REASONS:

[1] On the 12 March 2018 the Court ruled that Rule 59(4) and (5) and Rule 32(9) were not applicable to the security issue in this matter.

[2] On 13 March 2018 Ms Angula for plaintiff requested reasons to the Court's ruling.

[3] During June 2017 Case I 2175/2004 and case I 1758/2007 were docket allocated to Oosthuizen, J as Managing Judge.

[4] Both cases were priorly case managed by another Judge of this division

[5] In both cases Notices of Status Hearings were given by Oosthuizen, J on 26 June 2017 for 17 July 2017.

[6] The parties were to file a comprehensive status report on or before 13 July 2017 in respect of how the cases relate to each other and how the matters should proceed.

[7] Eventually, and three Court orders later, the required comprehensive status report was filed on 18 August 2017.

[8] I refer to the summations in that status report, which concluded with a joint proposal as to the way forward in paragraph 101, thereof.

[9] The parties proposed that in the event they were unable to settle, the court is requested to direct -

9.1 a hearing date for Atlantic and Marketlink's review application concerning security for costs in respect of case I 2175/2004. Note that the taxing master's stated case was/is still outstanding and the requested review thereof stationary.

9.2 on the status of Standard Bank's application for dismissal of Atlantic and Marketlink's case I 2175/2004, heard and reserved by a different Judge on 16 April 2015 and 21 May 2015. Note that this too is not in the control of the

present Managing Judge.

9.3 the consolidation of the two cases in question, after compliance with 9.1 and 9.2 above.

[10] The inherent risk in 9.1 and 9.2 is the lapsing of yet another considerable period of time, not entirely in the control of the Managing Judge for the reason that a taxing master and a retired Judge are respectively in default from about February 2014 and 20 May 2015.

[11] On 21 August 2017 Miller J, Acting, on behalf on this Managing Judge postpone the matter to 25 September 2017.

[12] On 22 September 2017 a further joint status report was filed with a repeat request concerning a hearing date for review and status of dismissal application as in 9.1 and 9.2 above.

[13] On 25 September 2017 the Court ordered the matter to be postponed to 29 September 2017 in chambers for parties to obtain dates for hearing of arguments. In retrospect the order seems odd in view of what was noted in 9.1, 9.2 and 10 above.

[14] However, on 29 September 2017 the impracticality of the proposed sought directions have presented and counsel for Standard Bank then proposed Atlantic and Marketlink to obtain instructions in respect of security for costs in the amount of N\$1 000 000.00. The matter was then postponed to 30 October 2017 for counsel of Atlantic and Marketlink to obtain instructions.

[15] On 10 October 2017 counsel for Standard Bank by way of letter demand feedback on the proposed security within 3 days.

[16] On 27 October 2017 counsel for Standard Bank filed a status report, concluding, unilaterally, that Marketlink and Atlantic cannot provide sufficient security and requests directions.

[17] On 30 October 2017 the Court ordered a further postponement to 27 November 2017 for a status hearing in respect of the payment of N\$1 000 000.00 in security by

defendants.

[18] When the aforesaid order was made the court was aware thereof that the defendants offered security in the form of a bond over immovable property, which plaintiff in turn said was under attachment and not acceptable. This was clear from plaintiff's status report filed on 27 October 2017.

[19] The court in the premises did not intend to and did not invoke Rule 59(4) or Rule 59(5). They were clearly not applicable. Counsel is advised to read and appreciate the rule. Apart from the fact that the registrar was not involved in the security for N\$1 000 000.00, the defendants did not refuse or failed to pay the security. The court did not order them to pay the N\$1 000 000.00 by a certain date until the order of 12 March 2018.

[20] Counsel for Standard Bank on 22 November 2017 filed another one sided status report asserting that the Managing Judge has directed defendants to pay the N\$1 000 000.00 in security on 30 October 2017 and erroneously invoked Rule 59(5).

[21] Defendants responded with their own one sided status report on 24 November 2017, concluding that the N\$1 000 000.00 in security will be paid, informing that the property previously offered to be bonded, is sold, transfer thereof being in the process and once finalised the security will be made available towards the end of January 2018, beginning of February 2018.

[22] Then on 27 November 2017 counsel for Standard Bank and Atlantic/Marketlink engaged each other in the name of their respective clients.

[23] The transcript for 27 November 2017 is available.

[24] Plaintiff's counsel is directed to page 9, lines 21 to 29 of the aforesaid transcript.

[25] On 1 December 2017 Atlantic and Marketlink filed an application supported by an affidavit of Frans Hendrik Badenhorst, a director of them, wherein reasonable time for furnishing the N\$1 000 000.00 security, is requested.

[26] Standard Bank opposed on 5 December 2017 and its Head: Legal Services,

filed an opposing/answering affidavit on 14 December 2017.

[27] The affidavit of Standard Bank consists mainly of legal submissions and arguments.

[28] The opposition is premised on non-compliance with Rule 32(9) and Rule 59(4) and 59(5).

[29] On 22 November 2017 and 24 November 2017 Standard Bank and Atlantic/Marketlink took firm opposing positions and cemented same on 27 November 2017. The court granted Atlantic/Marketlink the opportunity to file an application and that was done *in curiam* in the presence of Ms Angula. See the transcript, page 9, lines 21-29. A fresh interlocutory process was neither intended nor required. The court and the parties were in the process of resolving the security in order for the matters to proceed on the real issues, the merits. A Rule 32(9) procedure was not required and would have been nonsensical in the circumstance. A litigant is not allowed to hijack case management.

[30] Atlantic and Marketlink did not reply.

[31] On 18 January 2018 plaintiff, in reasonable terms, requested a status hearing.

[32] On 8 and 13 February 2018 the Managing Judge issued notices of status hearings for 21 February 2018.

[33] On 20 February 2018 plaintiff filed yet another status report. Paragraphs 3 and 4 thereof reveals the unfortunate and erroneous mindset of counsel for Standard Bank, which is regretted.

[34] For the above reasons and in the circumstances appearing from this reasoning, the order of 12 March 2017 was issued, which also place Atlantic and Marketlink on terms to provide the N\$1 000 000.00 security to plaintiff on or before 25 April 2018.

APPEARANCES

PLAINTIFF:

Angula

AngulaCo. Inc., Windhoek

1ST AND 2ND DEFENDANTS:

Mueller

Mueller Legal Practitioners, Windhoek