

“ANNEXURE 11”

Practice Direction 61

IN THE HIGH COURT OF NAMIBIA

Case Title: <i>Nedbank Namibia Limited v Greg Selton Naobeb</i>	Case No.: HC-MD-CIV-ACT-CONT-2018/03709
	Division of Court: High Court (Main Division)
Heard/trie before: Honourable Mr Justice B Usiku J	Date of hearing: 26 April 2019
	Delivered on: 26 April 2019
Neutral citation: <i>Nedbank Namibia Limited v Greg Selton Naobeb</i> (HC-MD-CIV-ACT-CONT-2018/03709) [2019] NACHMD 130 (26 April 2019)	
The Order: Having heard Ms Kuzeeko, on behalf of the plaintiff and Ms. Da Silva, on behalf of the defendant and having read documents filed of record: IT IS ORDERED THAT: <ol style="list-style-type: none">1. The application for summary judgment is refused.2. The defendant is granted leave to defend the action.3. The parties are directed to file a joint case plan on or before 30 May 2019.4. The costs of the summary judgment application shall be costs in the cause.5. The matter is postponed to 05 June 2019 at 15:15 for a Case Planning Conference.	

Reasons: Practice Direction 61(9)

[1] In this matter the plaintiff, Nedbank Namibia Limited, applies for summary judgment against the defendant for:

- '1. An order confirming the Plaintiff's cancellation of the agreement.
2. An order directing the Defendant to immediately restore the motor vehicle, a 2017 New Ford Ranger 2.2 TDCI 6MT 4x2 XL Dc motor vehicle, with engine No.QJ2LPGL14589 and chasis No. AFAPXXMJ2PGL14589 to the Plaintiff and failing compliance therewith, within such time as may be directed by the above Honorable Court, authorizing and directing the Deputy Sheriff to take the said vehicle into his possession and to deliver same to the Plaintiff.
3. An order declaring the amounts paid by the Defendant in terms of the agreement to be forfeited in favour of the Plaintiff.
4. Costs of suit at attorney/client scale.
5. Furthermore and/or alternative relief'.

[2] The defendant opposes the application for summary judgment and has filed an opposing affidavit.

[3] Having considered the application for summary judgment, I am not satisfied that prayers 1 and 3 are claims in respect of which summary judgment can be properly moved in terms of rule 60 (1). I say so because, in my opinion prayers 1 and 3, as more fully set out in paragraph [1] hereof, are not claims:

- (a) based on a liquid document;
- (b) for a liquidated amount of money;
- (c) for delivery of a specified movable property; or
- (d) for ejectment.

[4] I have considered prayer 2 within the context of the whole case and it appears to me that prayer 2, (the restoration of the motor vehicle to the plaintiff) is linked to the agreement between the parties having been cancelled. The cancellation of the agreement is

one of the relief that the plaintiff prays for herein. It, therefore, appears to me, on the facts of the present case, that prayer 2 cannot be granted in the circumstances.

[5] In the result, and for the foregoing reasons, I make the following order:

1. The application for summary judgment is refused.
2. The defendant is granted leave to defend the action.
3. The parties are directed to file a joint case plan on or before 30 May 2019.
4. The costs of the summary judgment application shall be costs in the cause.
5. The matter is postponed to **05 June 2019** at **15:15** for Case Planning Conference.

Judge's signature	Note to the parties:
	Not applicable
Counsel:	
Plaintiff	Defendant
Ms Kuzeeko Of Dr Weder Kauta & Hoveka Inc	Ms Da Silva Of Conradie and Damaseb Legal Practitioners