

“ANNEXURE 11”

IN THE HIGH COURT OF NAMIBIA

<b>Case Title:</b> Development Bank of Namibia Limited vs Benlin Investment Close Corporation.	<b>Case No:</b> HC-MD-CIV-ACT-CON-2018/00428
	<b>Division of Court:</b> High Court, Main Division
<b>Heard before:</b> Honourable Justice Herman Oosthuizen	<b>Date of hearing:</b> 25 March 2019
	<b>Delivered on:</b> 16 May 2019
<b>Neutral citation:</b> <i>Development Bank of Namibia Limited vs Benlin Investment Close Corporation</i> (HC-MD-CIV-ACT-CON-2018/00428) [2019] NAHCMD 150 (16 May 2019).	
<b>Result on procedure:</b> Struck from the roll with costs against plaintiff.	
<b>The order:</b>  Having heard <b>Mercy Kuzeeko</b> counsel for the plaintiff, <b>Norman Tjombe</b> , counsel for the defendants, and having read the documents filed of record:  <b>IT IS ORDERED THAT:</b>  [1] Plaintiff's exceptions are struck from the roll with costs against plaintiff.  [2] Plaintiff shall replicate to defendants' plea and plea to the counterclaim on or before <b>30 May 2019</b> .  [3] Defendants shall replicate to plaintiff's plea to the counterclaim on or before <b>12 June 2019</b> .  [4] The parties shall file their joint or individual case management reports, Rule 24(1) compliant, on or before <b>20 June 2019</b> .	

[5] A case management conference shall be conducted on **24 June 2019** at **14H00**.

**Reasons for orders:**

[1] Plaintiff filed 2 documents on 7 December 2018 both containing exceptions in relation to the plea filed by defendants.

[2] First document relating to the exception contained three exceptions on the grounds that defendants' plea is vague and embarrassing and consequently lacking necessary averments to sustain a cause of action.

[3] Second document relating to exception contained two exceptions (same as first two in first document) on the grounds that defendants' plea is vague and embarrassing, alternatively lacking averments to sustain a cause of action.

[4] Another document was filed by plaintiff on 7 December 2018, purporting to be a report in terms of Rule 32(10) of the Court Rules, stating that plaintiff engaged defendants' legal practitioners relating to the intended exception to defendants' plea and counterclaim.

[5] On 30 January 2019 a rather confusing joint status report was filed in the sense that paragraph 2 thereof convey ostensible 'consensus' between the parties that plaintiff did not comply with rule 32(9) in respect of defendants' counterclaim.

[6] I repeat that both exception documents only refer to the plea of defendants.

[7] Plaintiff's status report of 12 November 2018 say nothing about an intended exception and only address the issue of condonation for its failure to file a replication to defendants' plea and plea to the counterclaim as ordered on 1 October 2018. It further indicated that defendants would not oppose the application for condonation.

[8] During the case management proceedings of 12 November 2018 in the afternoon plaintiff and defendants were represented by legal practitioners.

[9] Plaintiff's legal practitioner indicated to the court (after condonation was dealt with *instanter*) that plaintiff wants to except against defendants' counterclaim. The audio record evidenced two distinct conveyances of the aforementioned.

[10] The Court consequently made the order it made dated 12 November 2018 and filed on 13 November 2018 in the following terms:

1. Plaintiff shall replicate to defendants plea on or before 28/11/2018.
2. Plaintiff shall engage defendant ito rule 32(9) iro defendants counterclaim on or before 28/11/2018.
3. Plaintiff shall file its intended exception to defendant's counterclaim on or before 7/12/2018.
4. Parties shall discover on or before 14/12/2018.
5. The case is postponed to 04/02/2019 at 14:00 for Status hearing (Reason: Agreement By Parties).
6. The parties' attention is drawn to the provisions contained in Part 6 of the Rules of High Court.'

[11] There was no application for the rectification of the aforesaid order, nor a condonation application for non-compliance in respect of the replication to the plea.

[12] Rule 57(1) of the Court Rules applied to the Court Order of 12 November 2018 required from plaintiff to deliver an exception to the plea on or before 28 November 2018 and Rule 32(9) and (10) compliance in respect of defendants' plea on or before 28 November 2018. The directions sought and given by the Court *in curiam* on 12 November 2018 clearly was on the intended exception to the counterclaim.

[13] In the premises, it is ordered that -

[13.1] Plaintiff's exceptions are struck from the roll with costs against plaintiff.

[13.2] Plaintiff shall replicate to defendants' plea and plea to the counterclaim on or before **30 May 2019**.

[13.3] Defendants shall replicate to plaintiff's plea to the counterclaim on or before **12 June 2019**.

[13.4] The parties shall file their joint or individual case management reports, Rule 24(1) compliant, on or before **20 June 2019**.

[13.5] A case management conference shall be conducted on **24 June 2019** at **14H00**.

<b>Judge's signature:</b>	<b>Note to the parties:</b>
<b>Counsel:</b>	
<b>Plaintiff(s)</b>	<b>Defendant (s)</b>
Mercy Kuzeeko	Norman Tjombe
DR WEDER, KAUTA & HOVEKA INC	TJOMBE-ELAGO INC