

IN THE HIGH COURT OF NAMIBIA

<p>Case Title: Caterplus Namibia (Pty) Ltd t/a Blue Marine Interfish // Hallie Investment 140 CC t/a Wimpy Maerua and Christiaan Jacobus Van Der Merwe.</p>	<p>Case No: I 3086/2012</p> <p>Division of Court: High Court, Main Division</p>
<p>Heard before: Honourable Justice Herman Oosthuizen</p>	<p>Date of hearing: 22 May 2019</p> <p>Delivered on: 21 June 2019</p>
<p>Neutral citation: <i>Caterplus Namibia (Pty) Ltd t/a Blue Marine Interfish v Hallie Investment 140 CC t/a Wimpy Maerua</i> (I 3086/2012) [2019] NAHCMD 205 (21 June 2019).</p>	
<p>Result on merits: Application for discovery in terms of Rule 28 dismissed with costs.</p>	
<p>The order:</p> <p>Having heard Mssrs Töttemeyers SC and Schickerling counsel for the plaintiff, Mr C J Van der Merwe, for the first and second defendants, and having read the documents filed of record and considered arguments:</p> <p>IT IS ORDERED THAT:</p> <p>Defendants' application for further discovery in terms of Rule 28(14) is dismissed with costs to include the costs of one instructing and two instructed counsel uncapped, i.e Rule 32 (11) does not apply.</p>	
<p>Reasons for orders:</p>	
<p>[1] Defendants' application was brought on Notice of Motion on 7 April 2017, abandoned on 24 May 2017 and revived on 15 February 2019 subsequent to the refusal of this court to allow further amendments to defendants' pleadings on 12 October 2018.</p> <p>[2] In coming to the conclusion to refuse the application in terms of Rule 28(14) the</p>	

Court has considered the overriding objective to facilitate the resolution of the real issues justly, speedily, efficiently and cost effectively and the factors set out in Rule 1(4)(a)-(c) particularly. Defendants are wanting in each of the last-mentioned.

[3] Defendants did not prove the twin requirements in Rule 28(1), i.e that documents required are relevant to the issues in question and proportionate to the needs of the case. In coming to the latter conclusion the court considered the pleadings. In addition the court took note of the plaintiff's special plea of prescription that defendants' counterclaim relating to the period before 7 January 2013 might have become prescribed.

[4] The heads of argument tendered by defendants does not constitute legal argument at all, but alleged historical recitals and summaries, which duly trimmed with relation to relevancy, may or may not pass as a witness statement.

Judge's signature:	Note to the parties:
Counsel:	
Plaintiff(s)	Defendant (s)
Mssrs Töttemeyers SC and Schickerling	Mr C J Van der Merwe
OF FRANCOIS ERASMUS & PARTNERS	2ND DEFENDANT IN PERSON