

“ANNEXURE 11”

IN THE HIGH COURT OF NAMIBIA

Case Title: Kurt Bellwinkel and Another // Leon David Van Niekerk and Another	Case No: HC-MD-CIV-ACT-CON-2017/04625
	Division of Court: High Court, Main Division
Heard before: Honourable Justice Herman Oosthuizen	Date of Hearing: None. On written arguments.
	Delivered on: 1 June 2020
Neutral Citation: <i>Bellwinkel v Van Niekerk</i> (HC-MD-CIV-ACT-CON-2017/04625) [2020] NAHCMD 203 (1 June 2020)	
Result on merits: Partially successful	
The Order: Having heard counsel for the plaintiffs, and counsel for the defendants — IT IS ORDERED THAT: [1] The amount in paragraph 11 of the particulars of claim, as well as in prayer 1, is substituted with “N\$4 401 889.38”. [2] The remainder of the contents of plaintiffs' Particulars of Claim and Prayers remain the same, without any amendments. [3] No amendment other than that contained in order 1 above is allowed and no further pleading or amendment to the pre-trial order apart from the substituted amount is necessary or required. [4] Each party shall bear its own costs relating to the amendment proceedings. [5] The case is postponed to 12/06/2020 at 08h30 for Roll Call Hearing.	

Reasons for Orders:

[1] Plaintiffs caused a notice of intention to amend their particulars of claim to be filed after the close of pleadings and after a pre-trial order was issued.

[2] The notice to amend was filed on 13 December 2019, without approaching the defendants first.

[3] Defendants have objected.

[4] The nature of the intended amendments according to the plaintiffs is of such a nature and purpose to rectify an obvious error that was made in their letter of demand and subsequent particulars of claim. The error made by them was to include only the figure resembling "further interest" which they claimed as the penalty interest into paragraph 11 of their particulars of claim and prayer 1, instead of the figures for "further interest" and normal interest as portrayed in paragraph 10 of their particulars of claim read together with Annexure "B" of their particulars of claim. Annexure "B" of the particulars of claim clearly displays 2 columns of calculations. One for normal and one for "further interest" (penalty interest on top of normal interest levied on late payments as per the particulars of claim). Only the sub-total of the second column, to wit N\$2 380 818.34 appears in paragraph 11 and prayer 1 of the particulars of claim.

[5] Plaintiff have claimed in their particulars for "2. Interest on the aforesaid amount at the rate of 20% per annum calculated from 29 August 2016 until date of final payment;"

[6] What plaintiff's regarded as mere rectifications caused defendants to throw the proverbial book of objections to the plaintiffs.

[7] This being an interlocutory application at an advanced stage of litigation which prompted the vehement response by defendants, inclines the Court to approach the dispute (taking into account the written arguments of the parties together with the authorities cited) with wisdom and circumspection.

[8] The Court recognises that a mistake was made by the plaintiffs on the pleadings. The Court is however mindful thereof that plaintiff's intended rectification very well might

introduce proposed amendments which might not be due to mere mistakes previously made, but the fruit of careful reconsideration and rephrasing of relief to obtain a more advantageous position not previously introduced and prayed for, and not presently merited.

[9] In the circumstances of the case and due to the limited amendment the Court shall allow; and for the equality of success attained by each party, the Court orders each party to bear its own costs.

[10] In the result the following orders are made:

[10.1] The amount in paragraph 11 of the particulars of claim, as well as in prayer 1, is substituted with "N\$4 401 889.38".

[10.2] The remainder of the contents of plaintiffs' Particulars of Claim and Prayers remain the same, without any amendments.

[10.3] No amendment other than contained in order [10.1] above is allowed and no further pleading or amendment to the pre-trial order apart from the substituted amount is necessary or required.

[10.4] Each party shall bear its own costs relating to the amendment proceedings.

[10.5] The case is postponed to 12/06/2020 at 08h30 for Roll Call Hearing.

Judge's signature:	Note to the parties:
Counsel:	
Plaintiffs	Defendants
Ellis Shilengudwa Inc.	Francois Erasmus & Partners