

“ANNEXURE 11”

IN THE HIGH COURT OF NAMIBIA

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| <b>Case Title:</b><br>Zacharias Johannes Grobler vs Trustco Insurance Limited  | <b>Case No:</b><br>HC-MD-CIV-ACT-CON-2018/02922 |
|  | <b>Division of Court:</b><br>High Court         |
| <b>Heard before:</b><br>Honourable Justice Herman Oosthuizen   | <b>Date of hearing:</b><br>29 November 2019     |
|  | <b>Delivered on:</b><br>31 January 2020         |
| <b>Neutral citation:</b> <i>Grobler v Trustco Insurance Limited</i> (HC-MD-CIV-ACT-CON-2018/02922) [2020] NAHCMD 30 (31 January 2020).   |   |
| <b>Result on merits:</b><br>Special Plea refused.  |   |
| <b>The order:</b><br><br>Having heard <b>Mr Mouton</b> , counsel for the plaintiff, and <b>Mr Jacobs</b> , counsel for the defendant, on 29 November 2019:<br><br><b>IT IS ORDERED THAT:</b><br><br>1. The Special Plea of the defendant is dismissed.<br><br>2. The liability, if any, of the defendant is to be established first by judicial findings consequent to proper pleading over by the defendant.<br><br>3. Plaintiff shall by way of replication to the plea(s) of the defendant include the issues which he has raised in his replication to the special plea of defendant if so advised.<br><br>4. The merits/demerits and the liability of the defendant, if any, shall be decided before referral to taxation if need be. |   |

5. Costs shall stand over for determination at the end of the trial.
6. Defendant shall plea and counterclaim (if any) on or before **14 February 2020**.
7. Plaintiff shall replicate to the plea and plea to the counterclaim on or before **28 February 2020**.
8. Defendant shall replicate to the plea to the counterclaim on or before **7 March 2020**.
9. Discovery by the parties shall be done on or before **14 March 2020**.
10. A joint case management report shall be filed on or before **20 March 2020**.
11. A case management conference shall be held on **30 March 2020** at **14h15**.

**Reasons for orders:**

1. On 18 June 2019 this Court delivered a Ruling refusing plaintiff's application for Summary Judgement in the amount of N\$151 499.63.
2. Defendant was granted leave to defend the whole action instituted against it.
3. Plaintiff has instituted an action against the defendant for payment of legal fees.
4. Plaintiff has done work for the defendant since 2002 as a service provider to defendant on behalf of defendant's insured members.
5. Defendant has insurance policies for and on behalf of members of the public who contracted for the provision of legal services with it.
6. Defendant has contracted with plaintiff for rendering legal services to some of defendant's insured members upon an agreed fee structure for designated types of services.

7. Plaintiff has instituted two (2) claims against defendant.

8. Claim one is for payment of fees under the agreed fee structure. Save for an admitted amount of N\$62 113.10 the defendant on different grounds contested the remainder of claim one.

9. Plaintiff however has also instituted a Second Claim against defendant for an amount of N\$353 541.71 in respect of legal services rendered on defendant's behalf (to its members) for work not provided for in the structures of defendant. This claim is based on practices which plaintiff alleges are unreasonable and illegal in terms of the Rules of Court and imposed unreasonable and illegal restrictions on plaintiff's Constitutional Rights under Articles 21(1)(j) and 21(2).

10. Plaintiff alleges that he is entitled to payment of reasonable fees for work done in a summary which he attached as an annexure to his particulars of claim. That summary is allegedly based on a structure provided for in Rules of Court.

11. Subsequent to the refusal of the Summary Judgment application, the defendant has raised a special plea for taxation. See paragraphs 1.5, 1.6, 2, 3 and 4 of the Special Plea dated 1 August 2019. The Special Plea of defendant contends that no plea on the merits is necessary and that it is entitled to taxation of a bill of costs prepared by plaintiff in terms of the service agreement and the agreed tariff's.

12. Defendant then furthermore (in his Heads of Argument dated 12 November 2019) moved that its Special Plea should be upheld with costs and that an order be issued for –

12.1 taxation in terms of the agreed tariffs;

12.2 the taxed amount to become due and payable by defendant, and

12.3 the defendant be awarded costs of suit on a party and party scale to include the costs of one instructing and one instructed counsel.

13. In essence the defendant requires from the Court to allow and expect from the taxing master to usurp judicial functions and to adjudicate liability of the defendant on legal and factual issues raised by the plaintiff in his particulars of claim and in his replication to the

special plea of defendant.

14. On 18 June 2019 the Court provided reasons for the refusal of Summary Judgment. Those reasons (with rectification of the reference to Rule 60(5)(b)(ii) to read 60(5)(b)(i)) remain pertinent and applicable for the Special Plea of taxation *mutatis mutandis*.

15. Judicial deliberation and findings should be made in respect of the merits/demerits subsequent to proper pleading over by the defendant.

16. Only after deciding the merits/demerits and the liability of the defendant shall the matter be referred to taxation if need be and upon direction of the Court.

17. The case relied upon by defendant in paragraph 5 of its Special Plea as authority not to plea over on the merits does not find application to the case at hand.

18. Apart from the accepted law that a client has a right to insist on taxation and to regard an untaxed bill of costs and/or claim for monetary compensation for legal services rendered as not liquidated the question whether a debt is capable of speedy ascertainment is a matter for determination of the individual discretion of a judge. A taxing master is concerned with determination of quantum and the reasonable charge for work done by the practitioner.

19. The case at hand requires from the presiding judge to determine remaining issues of merits and liability, including issues of fact and law prior to the determination of quantum and the reasonableness thereof.

20. Referral to taxation at this stage in accordance with defendant's Special Plea, will likely culminate in review of the allocators of the taxing master.

21. In the result the following orders are made:

21.1 The Special Plea of the defendant is dismissed.

21.2 The liability, if any, of the defendant is to be established first by judicial findings

consequent to proper pleading over by the defendant.

21.3 Plaintiff shall by way of replication to the plea(s) of the defendant include the issues which he has raised in his replication to the special plea of defendant if so advised.

21.4 The merits/demerits and the liability of the defendant, if any, shall be decided before referral to taxation if need be.

21.5 Costs shall stand over for determination at the end of the trial.

21.6 Defendant shall plea and counterclaim (if any) on or before **14 February 2020**.

21.7 Plaintiff shall replicate to the plea and plea to the counterclaim on or before **28 February 2020**.

21.8 Defendant shall replicate to the plea to the counterclaim on or before **7 March 2020**.

21.9 Discovery by the parties shall be done on or before **14 March 2020**.

21.10 A joint case management report shall be filed on or before **20 March 2020**.

21.11 A case management conference shall be held on **30 March 2020** at **14h15**.

| <b>Judge's signature:</b> | <b>Note to the parties:</b>           |
|---------------------------|---------------------------------------|
|                           |                                       |
| <b>Counsel:</b>           |                                       |
| <b>Plaintiff</b>          | <b>Defendant</b>                      |
| Mr Mouton<br>Grobler & CO | Mr Jacobus Visser<br>Koep & Partners. |

