

REPUBLIC OF NAMIBIA



HIGH COURT OF NAMIBIA, MAIN DIVISION, WINDHOEK

JUDGMENT

CASE NO: HC-MD-CIV-ACT-DEL-2019/00060

In the matter between:

HITJIVIRUE SAGGUES HAAKURIA

PLAINTIFF

and

PUVITANDA JAMES KANGUEEHI

DEFENDANT

TAVIZEEKUJE HAAKURIA

THIRD PARTY

Neutral Citation: *Haakuria v Kangueehi* (HC-MD-CIV-ACT-DEL-2019/00060) [2020]
NAHCMD 330 (4 August 2020)

Coram: RAKOW AJ

Heard: 29 June – 1 July 2020

Delivered: 4 August 2020

Flynote: Motor Vehicle Accident – Negligence – Defendant colliding with plaintiff's stationary vehicle – Where a vehicle collides in the rear end of the vehicle, there is *prima facie* evidence of negligence on the part of the driver of that vehicle.

Summary: The Plaintiff instituted action against the Defendant for damages suffered when the vehicle of the Defendant collided with the vehicle of the Plaintiff. The vehicle of the Plaintiff, red Isuzu KB250 motor vehicle with registration number N 10545 OT was driven by the son of the Plaintiff, Mr. Tavizeekuje Haakuria, who was joined in these proceedings as a 3rd party and against whom the Defendant instituted a claim. The Defendant drove a white Toyota Hilux pick-up motor vehicle with registration number N203-681W. The accident took place on 8 July 2018 at approximately 20h20 on Romeine Street, Herero location, Windhoek and at a speed hump in the said road when he went to drop off his girlfriend. The reason for the accident, the third party testified that he drove partly off the road surface on the left hand side of the road when he reached the house of his girlfriend. He brought the vehicle to a standstill with most of the vehicle on the sidewalk and only the right hand wheels of the vehicle which were still on the road surface. He activated his hazard lights to warn other motorists of the vehicle's presence. While he stood like this he suddenly felt another motor vehicle colliding with the rear end of the Plaintiff's vehicle. He got out of the Plaintiff's vehicle and saw that a Toyota Hilux vehicle with registration number N203681W collided with the rear end of the Plaintiff's vehicle.

The defendant's version on the other hand is that he was the driver of a white Toyota Hilux pick-up vehicle with registration N203681W and he is also the owner of this vehicle. As he was driving, he saw a red Isuzu motor vehicle travelling ahead of him. As he approached a speed hump, he reduced his speed and applied his brakes. As he proceeded over the speed bump, the driver of the red Isuzu motor vehicle with registration N10545OT drove partly of the road and stopped his motor vehicle without any warning. He applied brakes to avoid an accident but could not and ended up colliding into the back of the Plaintiff's vehicle. He submitted that the Third Party, who was the driver of the vehicle of the Plaintiff, was the sole cause of the accident in that he failed to indicate his intention to leave the road suddenly without warning.

Held that the Court finds the plaintiff's version of the events more probable than the version of the defendant.

Held further that in view of the fact that the Court accepted the plaintiff and third party version of events the Court concluded that he switched on his indicator, turned partially off the road, switched on his hazards and off-loaded his girlfriend where-after the accident took place. Especially as the version of him switching on his hazard lights and dropping-off his girlfriend was not challenged during cross-examination. The Court therefore found the defendant did not act like a reasonable driver in the circumstances, did not keep a proper following distance, failed to keep a proper look-out and drove without the necessary care and diligence to other road users.

Held that it is trite law that with a rear-end collision the driver who collides with the rear of a vehicle in front of him is prima facie negligent unless he can give an explanation indicating that he was not negligent. Thus, in the absence of evidence to the contrary, it must follow that such negligence was the cause of the collision.

Held that the version presented by the Defendant did therefore not rebut the presumption of negligence based on *res ipsa loquitur* and he is therefore liable for the damages caused to the vehicle of the Plaintiff and his claim against the Third Party dismissed.

ORDER

1. Judgement is granted in favour of the Plaintiff against the Defendant
 - a. In the amount of N\$93 389.25;
 - b. Interest is granted, to be calculated on the aforesaid amount at the prescribed rate of 20% per annum from the date of judgement till the date of payment;
 - c. Cost of suit;
2. The Defendant's claim against the Third Party is dismissed, with cost of suit;
3. The case is finalized and removed from the roll.

JUDGMENT

RAKOW, AJ:

Introduction

[1] The Plaintiff, Mr. Hitjivirue Saggues Haakuria instituted action against the Defendant, Mr. Puvitanda James Kangueehi for damages suffered when the vehicle of the Defendant collided with the vehicle of the Plaintiff. The vehicle of the Plaintiff, red Isuzu KB250 motor vehicle with registration number N 10545 OT was driven by the son of the Plaintiff, Mr. Tavizeekuje Haakuria, who was joined in these proceedings as a 3rd party and against whom the Defendant instituted a claim. The Defendant drove a white Toyota Hilux pick-up motor vehicle with registration number N203-681W. It is a common fact that the accident took place on 8 July 2018 at approximately 20h20 on Romeine Street, Herero location, Windhoek and at a speed hump in the said road.

[2] On behalf of the plaintiff it was alleged that the negligent driving of the defendant caused the collision in that he inter alia:

- failed to keep a proper lookout for other vehicular traffic and in particular that of the Plaintiff's motor vehicle, which vehicle was travelling ahead of him;
- drove at an excessive speed in the prevailing circumstances;
- failed to take cognizance of the Plaintiff's vehicle which had driven partially off the road surface after the speed bump, come to a standstill on the pavement and activated its hazard lights with only the right-hand side wheels of the vehicle protruding onto the road surface;
- failed to notice the warning signals provided by the Plaintiff's vehicle which was standing stationary partially in the road surface in front of him and as a result collided with the rear end of the Plaintiff's vehicle;
- drove his vehicle whilst under the influence of intoxicating liquor;
- failed to apply the vehicle's brakes timeously and/or at all;
- failed to take the reasonable and necessary steps to avoid the said collision whilst he was able to do so;

- failed to exercise the degree of care normally expected from a reasonable driver under the same circumstances;

[3] As a result of the negligence of the Defendant as set out above, the Plaintiff alleges that he suffered damages to his vehicle to the amount of N\$93 389.25 which amount is made up from repair costs, rental of a replacement vehicle from 20 July 2018 to 22 August 2018, assessor's fees to assess the damage to the Plaintiff's vehicle and fair and reasonable costs incurred to establish the whereabouts of the Defendant.

[4] The Defendant joined the third party to the proceedings, who was the driver of the Plaintiff's vehicle at the time of the accident and also the son of the Plaintiff. The Defendant alleges that the sole cause of the collision was as a result of the negligent conduct of the Third Party in that he inter alia:

- failed to have regard to the presence of other road users in that he suddenly stopped his motor vehicle without warning to other road users;
- failed to keep a proper lookout;
- failed to avoid the collision in that by the exercise of reasonable care he could have and should have been able to do so.

[5] The defendant claimed damages to the amount of N\$281 380, 16 from the Third Party as the fair and reasonable costs for the repair to his vehicle to its pre-collision condition.

The Evidence in the matter

[6] The Plaintiff testified himself. He is the registered owner of an Isuzu KB250D-TEK vehicle with registration N10545OT. This vehicle was involved in a motor vehicle accident on 8 July 2018. A copy of the motor vehicle accident report was handed up as Exhibit "A". He went with the Third Party to the police station to report the accident and the Defendant at that stage offered to pay the excess amount. The excess amount was N\$6300 and the defendant send the N\$5000 via e-wallet to him.

[7] The next witness was the Third Party, Mr Davize Haakuria. He testified that he took his girlfriend home at approximately 20h20 on 8 July 2018 and he was driving with the vehicle of the Plaintiff. She stays in Romeine Street, Herero location. He drove partly off the road surface on the left hand side of the road when he reached the house of his girlfriend. He brought the vehicle to a standstill with most of the vehicle on the sidewalk and only the right hand wheels of the vehicle which were still on the road surface. He activated his hazard lights to warn other motorists of the vehicle's presence. While he stood like this he suddenly felt another motor vehicle colliding with the rear end of the Plaintiff's vehicle. He got out of the Plaintiff's vehicle and saw that a Toyota Hilux vehicle with registration number N203681W collided with the rear end of the Plaintiff's vehicle.

[8] He confronted the Defendant immediately and got the impression that the Defendant was under the influence of alcohol as he spoke with a slurrish speech as if he had consumed alcohol and he smelled of alcohol. He further had an empty glass in his hand when he alighted from the vehicle and was aggressive towards the witness. He also left the scene before the police officials arrived at the scene. He attended to the police station the next morning to report the accident and the Defendant also showed up. They completed the accident report, annexure A (also exh A) to his statement, and according to him, the Defendant was the sole cause of the accident in that he failed to keep a proper lookout for other vehicles, particularly the vehicle of the Plaintiff, drove at an excessive speed into the prevailing circumstances, failed to take cognizance of the fact that the witness drove partly off the road surface after the speed hump, and had his hazard lights on and therefore failed to notice the warning signals. He further drove his vehicle under the influence of intoxicating liquor and failed to apply his brakes timeously or at all. He further testified that the part on the left side of the accident report, Exhibit "A" was completed from the information he gave and the part on the right side was completed from information provided by the Defendant. It reads that the vehicle (of the Plaintiff) was travelling in a southern direction in Romeine Street and as he went over the speed hump he alleges that he moved onto the sidewalk but as he switched on his hazards, Vehicle A (vehicle of the Defendant) collided with his vehicle from the rear.

[9] He switched on his indicator to turn left before he drove on the side walk. The side walk is not a parking and it is not wide enough for a vehicle like the one he was driving to fit on. He checked his rear view mirror before he drove off and did not notice any vehicle behind him. The road at the scene of the accident is not flat, it first has a bit of an uphill and then went over the top of the hill, so on that side it was already a bit downhill. He could not see all the way down the road. He is further not an expert in alcohol detection but had the impression because he could see it, that the Defendant was drunk. The Defendant admitted at the police station that he was the cause of the accident and agreed to pay the excess amount of the insurance claim to his father. He send N\$3000 to his father and N\$2000 to the witness via e-wallet.

[10] Mr Bony Vries testified that he is an insurance assessor and has experience in the assessing of damage to motor vehicles which were involved in collisions, expressing an expert opinion on the cost of repairs of such damages and the reasonable market values of vehicles prior to, and after collisions. On 19 July 2018 he inspected an Isuzu vehicle with registration number N1054OT after the motor vehicle was allegedly involved in an accident. He confirmed that the vehicle was damaged in a collision and that the Plaintiff suffered damages to a total of N\$ 93 389.25 consisting out of N\$82 567.25 which was the reasonable repair costs to the vehicle, N\$9 062 which was a reasonable cost incurred for the rental of a replacement vehicle during the period 20 July 2018 to 22 August 2018, a fair and reasonable fee for the services of an assessor being N\$1410 and the reasonable cost incurred to establish the whereabouts of the Defendant, to wit N\$350. Documents relating to these amounts were then handed in as exhibits. After this evidence the Plaintiff and the Third Party closed their case

[11] The Defendant elected to testify and stated that on the evening of 8 July 2018 he was travelling on Romeine Street in Herero Location Windhoek. He was the driver of a white Toyota Hilux pick-up vehicle with registration N203681W and he is also the owner of this vehicle. As he was driving, he saw a red Isuzu motor vehicle travelling ahead of him. As he approached a speed hump, he reduced his speed and applied his brakes. As he proceeded over the speed bump, the driver of the red Isuzu motor vehicle with

registration N10545OT drove partly of the road and stopped his motor vehicle without any warning. He applied brakes to avoid an accident but could not and ended up colliding into the back of the Plaintiff's vehicle. He submitted that the Third Party, who was the driver of the vehicle of the Plaintiff, was the sole cause of the accident in that he failed to indicate his intention to leave the road suddenly without warning and he failed to keep a proper lookout when he stopped his vehicle in front of the vehicle of the Defendant. He testified that if the Third Party indicated before he pulled over, and kept a proper lookout, the accident would not have happened. He suffered damages to the value of N\$281 380.16 to his vehicle. The road lead uphill over the first speed hump and continues a little but further uphill till a second speed hump. The accident took place between the two speed humps. The vehicle of the Plaintiff was damaged at the right rear and the Defendant's vehicle on the right front side. He obtained estimates for the repairs that needed to be done to his vehicle.

[12] During cross-examination he explained that his vehicle was insured at Alexander Forbes but they did not repair the vehicle as his claim was rejected. He indicated that he drove at about 40 km/h when he approached the speed hump and then reduced his speed further. He knows the area and he is of the opinion that a pick-up vehicle can park on the sidewalk. He further explained that he left the scene of the accident only after about 45 minutes. He collected his cousin who stays nearby and asked him to remain with the vehicle and left to return home to collect an asthma pump because he did not have it with him in the vehicle and he felt that the powder inside the vehicle after the accident caused him not to be able to breath properly. He denied drinking anything before the time and smelling of alcohol. He went to the police station the next morning and there the policeman who assisted them told him that he is guilty because he bumped the Plaintiff's vehicle from the back and that is why he offered to pay for the damages. He read out the information that was allegedly provided by him to the police officer indicating that the accident was caused when he did not see the vehicle in front of him stopping. The police official also threatened to lock him up for leaving the scene of the accident without listening as to why he left the scene of the accident. He later provided a medical certificate to him from his doctor explaining that he suffers from asthma. He was not threatened to pay the N\$5000.00 but he was told that he is the guilty party. It was

only when he went to his legal practitioners later that they told him that he is not the guilty party. He repaired the vehicle himself but not at Star Body Works. He bought the vehicle that year earlier in February brand new. He could not provide any receipts for parts or for the work done to the vehicle and could not say exactly how much the repairs to the vehicle cost him.

[13] The Defendant reduced his speed to less than 40 km/h before the accident when he went over the hump. He continued for a further 20 – 30 m before the accident happened. He noticed the vehicle pulling off the road in front of him and suddenly saw it stopped. He was about 5 -6 m behind the vehicle of the Plaintiff when it stopped and could not swerve out in time. He did not see the hazards of the vehicle in front of him. He tried to stop but it was too abrupt. He testified that the Third Party did not indicate that he was turning and that caused the accident. This fact was however put to the Third Party when he testified and he therefore did not have an opportunity to answer to that. The house of the cousin of the Defendant was about 150 m away from the scene of the accident.

[14] The Defendant then called Hintice Brockerhoff who testified that he is an assessor and estimator at Star Body Works and had experience in the assessing of damages of motor vehicles, trucks and busses involved in motor vehicle collisions and the subsequent repair costs associated with such damages. He is therefore in the business of accessing the economical repair costs of such vehicles. On 3 October 2018 he inspected a Toyota Hilux pick-up with registration number N203681W and provided an estimate repair costs of N\$281 380.60 to repair the said vehicle. He has been working in the trade for about 15 years of which he did assessments for the last 7 years. He inspected the pick-up but Star Body Works did not do the repairs, he therefore only provided an estimate but when the work was done, the actual damage could only be assessed. He also testified that vehicles can sustain more damage when one of the vehicles in the collision is standing still than when both vehicles are moving, the amount of damages were therefore not unusual because one of the vehicles stood still and the other one was travelling between 30 and 40 km/h.

The legal argument

[15] The time and place of the accident, and parties to the accident, is common cause. What is however in dispute is the negligence, if any of the respective drivers and whether the quantum of their respective claims was proved. The Plaintiff carries the burden of proof in the current matter to establish that the defendant is liable in respect of his claim for damages. In addition the Defendant needs to prove the negligence of the Third Party in causing the damages he suffered to his vehicle. This needs to be established on a preponderance of probabilities.

[16] In *Dausab v Hedimund & Others*¹ the court commented as follows on the principle of the applicability of the principle of *res ipsa loquitur*:

‘The principle of *res ipsa loquitur* is fairly well settled. In our context, it applies where a motor vehicle collides with a stationary vehicle in circumstances which point to prima facie proof of negligence; and therefore a presumption of negligence arises. When *res ipsa loquitur* applies - ‘the facts speak for themselves’ - in that an inference of negligence is inescapable. It must follow that a driver of a vehicle which collides with a stationary vehicle is required to furnish a satisfactory explanation to negate the inference or presumption of negligence on his or her part. Should he or she fail to rebut the presumption, he or she will be held to have been negligent under the circumstances..... ’

and further at [22]

‘On a proper application of the *res ipsa loquitur* principle to the facts, the presumption of negligence did not operate against the third respondent, but it operated against the first respondent whose minibus collided with the third respondent’s stationary Mercedes Benz. It was the first respondent upon whom the evidential burden rested to negate the presumption of negligence.’

¹ (SA 24/2018) [2020] NASC 12 (07 May 2020).

[17] In *Caloline Lydia Engelbrecht v The Motor Vehicle Accident Fund*² Parker J clarified the application of the *res ipsa loquitur* principle. He said, with reference to various authorities:

'(t)his leads me, in my view, to only one enquiry, namely, has the plaintiff, having regard to the evidence, discharged the onus of proving, on a balance of probabilities, the negligence she has put forward against the defendant? Granted, as Mr. Erasmus appears to argue, looking at the nature of the accident, the mere happening of the accident may justify an inference of negligence. Such inference underlies the maxim "res ipsa loquitur", which both counsel debated in their submissions (See *Jensen v Williams, Hunt & Clymer Ltd* 1959 (4) SA 583 (O); *Naude, NO v Transvaal Boot and Shoe Manufacturing* 1938 AD379; *Stacey v Kent* 1995 (3) SA 344 (E); Cooper, *Dilictual Liability in Motor Law*, (Vol.2), pp. 100-103; Klopper, Isaacs and Leveson: *The Law of Collisions in South Africa*, 7th ed., p. 78.) Whether the Court ought to draw such inference depends on the nature of the explanation given by the defendant. (Naude, N.O., supra, at 392) But that is not to say that an onus rests upon the defendant to establish the correctness of his explanation on a preponderance of probability. (*Arthur v Bezuidenhout and Mieny* 1962 (2) SA 566 (A) at 576C-D) However, "[T]hrough the inference suggested by the nature of the accident does not shift the burden of disproving negligence on the defendant, still it does call for some degree of proof in rebuttal of that inference." (Naude, NO, supra, loc. cit).'

[18] In *Gerber v Road Accident Fund*,³ although a South African authority, the following was said about a rear end collision, which is still very much applicable in our law. The court said the following:

'It is trite law that with a rear-end collision the driver who collides with the rear of a vehicle in front of him is prima facie negligent unless he can give an explanation indicating that he was not negligent. Thus, in the absence of evidence to the contrary, it must follow that such negligence was the cause of the collision.'

The court referred to H B Kloppers, *The Law of Collision in South Africa* 7th ed p78 and *Union and South West Africa Insurance Co Ltd v Bezuidenhout*⁴ wherein the following was said:

'A reasonably careful motorist in peak traffic cannot, as long as he remains in his lane, otherwise drive on in a heedless and automatic manner at the speed maintained by the vehicles

² Case number I2346/2005, delivered on 15 November 2007.

³ (11/3022) [2015] ZAGPJHC 155 (26 June 2015).

⁴ 1982 (3) SA 957 (A) at 966A - B.

in front of him, without keeping a lookout for other traffic slowing down or even stopping. While the reasonable careful motorist does not have to guard against the reckless conduct of other motorists, he ought nonetheless to foresee that the traffic ahead of him may, for whatever reason, suddenly slow down or even stop, and he has a duty to conduct himself accordingly. The closer such a motorist is to a vehicle driving ahead of him, the greater is his duty of care.'

[19] The Defendant maintained that the Third Party stopped right in front of his vehicle without keeping a proper look out and therefore caused the accident. The uncontested evidence of the Third Party was that he pulled off the road partly and he switched on his hazards. The court was referred to the unreported South African case of *Rungasamy v Rampersad*⁵ where an accident happened in almost similar circumstances. This was a judgement on an appeal from a lower court, dealing with the negligence of a party stopping in a non-designated spot and it was held as follows:

'The next issue which arises is whether or not Haridass was in any way negligent and if this negligence contributed to the collision. In our view the fact that Haridass may not have stopped at a designated stop in light of the road works does not make him negligent. We are of the view that the court a quo's findings that had Haridass's taxi not been on the road, the collision would not have occurred, cannot be correct. In our view the fact that his vehicle was partially on the road in no way contributed to the collision. *The uncontested evidence is that his vehicle was stationary with its hazard lights on and that the passenger had alighted.* (Emphasis added) If the respondent, on his version had been following the taxi he would have observed this and had he adjusted his speed to his range of vision, he would clearly have had ample opportunity to observe Haridass's vehicle stationary on the road and taken steps to avoid colliding into the rear of his vehicle. It is for these reasons that we are of the view that if he had kept a proper look out, he would have noticed what was going on in front of him and could have successfully avoided colliding into the rear of Haridass's vehicle. The fact that Haridass did not stop at a designated stop, does not mean that he was responsible for the collision in a legal sense.

It is for these reasons that we are of the view that the respondent did not provide an acceptable explanation to rebut the presumption that he was prima facie negligent. Having found that Haridass was not negligent, and in no way contributed to the collision, it must follow that the respondent was the sole cause of the collision.'

This judgement followed *Fig Brothers (Pty.) Ltd. v S.A. Railways and Harbours*.⁶

⁵ (7721/2011, 445/2014) [2015] ZAKZPHC 48 (20 August 2015).

⁶ 1975 (2) SA 207.

[20] In *Ndabendi v Nandu*⁷ Masuku J suggested the formula for dealing with factual disputes as the ones set out in *Life Office of Namibia Ltd v Amakali*⁸ which in turn followed *SFW Group Ltd and Another v Martell Et Cie and Others*⁹ and sets out the formula as follows:

'The technique generally employed by our courts in resolving factual disputes of this nature may conveniently be summarized as follows. To come to a conclusion on the disputed issues, a court must make findings on

- (a) the credibility of the various factual witnesses;
- (b) their reliability; and
- (c) the probabilities.

As to (a), the court's finding on the credibility of a particular witness will depend on its impression about the veracity of the witness. That in turn will depend on variety of subsidiary factors, not necessarily in order of importance, such as

- (i) the witness's candour and demeanour;
- (ii) his bias, latent and blatant,
- (iii) internal contradictions in his evidence,
- (iv) external contradictions with what was pleaded or put on his behalf, or with established fact or with his own extra-curial statements or actions,
- (v) the probability or improbability of particular aspects of his version,
- (vi) the calibre and cogency of his performance compared to that of other witnesses testifying about the same incident or events . . .'

Findings

[21] The court finds that the Plaintiff and the Third Party were both credible witnesses that testified forthcoming and gave frank evidence. They did not contradict themselves. The expert witness for the Plaintiff also provided rank evidence, which is also accepted by this court with regard to the damages suffered by the Plaintiff. The court accepts the version of the Third Party that he switched on his indicator, turned partially off the road, switched on his hazards and off-loaded his girlfriend where-after the accident took place.

⁷ (I 343/2013) [2015] NAHCMD 110 (11 May 2015).

⁸ 2003 (1) SA 11 (SCA) at page 14H - 15E.

⁹ 2015 NR 1119 (LC) page 1129-1130.

Especially as the version of him switching on his hazard lights and dropping-off his girlfriend was not challenged during cross-examination.

[22] The court finds that the evidence of the Defendant on the other hand cannot be accepted. His version is highly improbable when he testified that he was driving 5 – 6 meters behind the vehicle of the Plaintiff when he saw the Plaintiff stopping and according to the evidence of the plaintiff he still had time to switch on his hazard lights and for his passenger to get off the vehicle before the collision occurred. It is highly unlikely that there was such a short distance between the two vehicles. The court further find it highly improbable that if the Defendant realized that a collision is going to take place, that he did not swerve to the right-hand lane slightly to avoid the said collision.

[23] The Defendant did not act like a reasonable driver in the circumstances, did not keep a proper following distance, failed to keep a proper look-out and drove without the necessary care and diligence to other road users. The Defendant further indicated in the police report that he failed to see the vehicle of the Plaintiff stopping and the Court find that this is most likely what happened and what caused the accident. The Defendant was not paying any attention to the vehicle driving in front of him. He further paid the money he undertook to pay towards the excess payment of the Plaintiff only at a later stage after he sold some cattle and the court find that his explanation for paying this money, inter alia that the police officer threatened to lock him up for leaving the scene of the accident is devoid of truth as could only have happened sometime after the accident as the evidence suggested that he first had to sell some cattle and the Plaintiff at least first had to know what the extend of the damages was before an amount could be agreed upon. His version regarding the payment of the excess amount was also not tested by his legal practitioner during cross-examination as it was initially denied that he made any payment.

[24] The version presented by the Defendant did therefore not rebut the presumption of negligence based on *res ipsa loquitur* and he is therefore liable for the damages caused to the vehicle of the Plaintiff and his claim against the Third Party dismissed.

Order:

1. Judgement is granted in favour of the Plaintiff against the Defendant

- a. In the amount of N\$93 389.25;
 - b. Interest is granted, to be calculated on the aforesaid amount at the prescribed rate of 20% per annum from the date of judgement till the date of payment;
 - c. Cost of suit;
2. The Defendant's claim against the Third Party is dismissed, with cost of suit;
 3. The case is finalized and removed from the roll.

E RAKOW

Acting Judge

APPEARANCES:

PLAINTIFF AND THRID PARTY:

F Erasmus

Francois Erasmus & Partners

Windhoek

DEFENDANT:

C Zimmer

Kangueehi and Kavendjii Inc

Windhoek