



HIGH COURT OF NAMIBIA MAIN DIVISION, WINDHOEK

JUDGMENT

HC-MD-CIV-ACT-CON-2018/03628

In the matter between:

ENDOBO PROPERTIES CC

PLAINTIFF

and

PETRUS MUREMI NAMBUNDU

1st DEFENDANT

SELMA NELAO ALPHEUS

2nd DEFENDANT

MARTIN MARTINO

3rd DEFENDANT

GUSTAV A GARISEB

4th DEFENDANT

MASONDE VIWANGU

5th DEFENDANT

BASILIUUM KAGUWO

6th DEFENDANT

JOHANNES KANYANGA NDYAMBA

7th DEFENDANT

CHRISTOLINE KAMBAMBA

8th DEFENDANT

SELONIKA UPINGASANA

9th DEFENDANT

BERNHARD HIKUMUA

10th DEFENDANT

FILLIP LOUIS

11th DEFENDANT

FILLIPINE GOMUSAS

12th DEFENDANT

IMMANUEL KATIVA SHILONDA

13th DEFENDANT

EFAT PEJAMATJIKE

14th DEFENDANT

LUCIA SABATHA

15th DEFENDANT

NORMAN FILIYATI	16th DEFENDANT
HELARIUS GOSBEB	17th DEFENDANT
ANDREAS NDIMBA THIMBUNGA	18th DEFENDANT
MARTINO MBIMBI	19th DEFENDANT
SARA HASEB	20th DEFENDANT

Neutral citation: *Endobo Properties CC v Nambundu* (HC-MD-CIV-ACT-CON-2018/03628) [2020] NAHCMD 405 (11 September 2020)

Coram: USIKU, J
Heard: 11,12,14,15 & 19 May 2020
Delivered: 11 September 2020

Flynote: Landlord and tenant – Eviction from leased premises – Plaintiff terminating lease agreement due to tenant not paying rent – Tenant having decided to stop paying rent – Tenant has to justify lawfulness of continued occupation of the premises – Eviction granted.

Summary: The plaintiff instituted action for the eviction of the defendants from certain premises owned by the plaintiff. The defendants defended the action and resisted the eviction on the ground, among other things, that the plaintiff is not the owner of the premises. The court held that the plaintiff has discharged its onus of proving ownership. The court further held that the defendants have failed to discharge the onus of establishing legal basis to occupy the premises against the will of the plaintiff.

ORDER

1. The cancellation by the plaintiff of the defendants' lease agreements, is hereby confirmed.
2. The defendants and all persons holding under them, are evicted from the respective units listed in column 4 of annexure 'POC2' (annexed to the plaintiff's

particulars of claim) and from the immovable property as more fully described in *Deed of Transfer No.T.3258/2006*.

3. Each defendant must vacate the property on or before 30 September 2020, failing which the deputy sheriff for the district of Tsumeb is hereby authorised and directed to evict the defendants and all persons holding under them.
4. The defendants are ordered, jointly and severally, the one paying, the other to be absolved, to pay the costs of suit of the plaintiff, including wasted costs of the 11 and 12 May 2020 and such costs include costs of one instructing and one instructed counsel.
5. The matter is removed from the roll and regarded finalised.

JUDGMENT

USIKU, J:

Introduction

[1] This is an action by the plaintiff for the eviction of twenty defendants from certain immovable property, as more fully described in column 4 of 'POC2' annexed to the plaintiff's particulars of claim.

[2] The plaintiff alleges that it is the owner of the immovable property in question by virtue of it being the registered owner under *Deed of Transfer No.T.3258/2006*. The plaintiff and each of the defendants entered into written lease agreements in respect of respective units listed in column 4 of *POC2*. In terms of the lease agreements each defendant was obliged to pay a monthly rental to the plaintiff in the amount agreed, as set out in column 7 of *POC2*, which amount escalates from time to time. Failure to pay rent entitles the plaintiff to cancel the lease agreement. In breach of their obligations in

terms of the lease agreements, the defendants are in arrears with the rental, in respect of their respective units, as reflected in column 14 of *POC2*, made up as per column 8 to 13 thereof.

[3] The plaintiff further avers that it herewith cancels the lease agreements and the defendants are required to vacate the premises. The plaintiff, therefore, prays for an order:

- (a) confirming the cancellation of the lease agreements;
- (b) evicting each defendant from respective units listed in column 4 of *POC2* and from the immovable property;
- (c) costs of suit, and,
- (d) further and/or alternative relief.

[4] The defendants defend the action. In their pleas, the defendants dispute that the plaintiff is the lawful owner of the immovable property in question and put the plaintiff to proof thereof. The defendants further allege that *Deed of Transfer No.T.3258/2006*, under which the plaintiff holds the property, is void and of no effect. The defendants allege that the entity which transferred the property to the plaintiff (namely: Ongopolo Mining Limited) was not the lawful owner of the property and could not lawfully transfer the property.

[5] In the alternative, the defendants plead that the property is leased by the plaintiff to the defendants, as a '*dwelling*' within the meaning of section 1 of the *Rents Ordinance 13 of 1977* ('*the Ordinance*'). In terms of *section 32(1)* of the *Ordinance*, the plaintiff is required to give the defendants at least three (3) months' notice, to vacate the premises. The notice to vacate the premises given by the plaintiff to the defendants falls short of the requirements of *section 32(1)* and such notice is of no legal effect or consequence.

[6] In the further alternative, the defendants plead that when the defendants executed their respective lease agreements, the plaintiff was not the lawful owner or

possessor of the property and, therefore, the defendants are entitled to resist the eviction.

Background leading to trial

[7] On the 05th November 2019, the matter was set down for trial for the 11th to 15th May 2020. On the 16th December 2019, Messrs Adv. SS Makando Chambers filed a notice of withdrawal as defendants' legal practitioners of record. According to the return of service, the notice of withdrawal was served on the defendants on 16 January 2020.

[8] On 11 May 2020, the date of trial, the plaintiff indicated their readiness to proceed with the trial.

[9] The defendants on the other hand, indicated that they had engaged the services of Messrs Mbaeva and Associates. However, Mr Mbaeva, the defendant's new legal practitioner of record has withdrawn in the evening of Friday the 8th May 2020. Ms Christoline Kambamba (the 8th defendant) speaking on behalf of the defendants present in court, requested the vacation of trial dates and for the matter to be postponed, to afford the defendants opportunity to obtain alternative legal representation.

[10] In view of the fact that the record still reflected Messrs Mbaeva and Associates as the defendants' legal representative of record, and there was no notice of withdrawal filed, the court directed that Messrs Mbaeva and Associates – specifically that Mr Titus Mbaeva appears in court the following day, the 12 May 2020, to show cause why he should not be deemed, in terms of *practice direction 50(2)* to have agreed to appear on behalf of the defendants during the period for which the matter was set down.

[11] On the 12 May 2020, after hearing Mr Mbaeva, the court directed that Mr Mbaeva is deemed under *practice direction 50(2)* to have agreed to appear on behalf of the defendants for the period for which the matter is set down for trial. There being no further impediment for the trial to proceed, the court ordered that trial proceeds.

[12] The plaintiff called its first witness Mr Hermanus Christoffel Groenewald (“Mr Groenewald”) to give evidence. As Mr Groenewald was reading the first or second paragraph of his witness statement into the record, Ms Christolene Kambamba (the eighth defendant), rose and indicated she had something to say. She stated that she was speaking on behalf of all defendants, and that the defendants are not happy with the services of their legal representative, Mr Mbaeva. The reason for the unhappiness, Ms Kambamba said, is that on Friday, 8 May 2020, Mr Mbaeva had asked the defendants to pay him N\$ 20,000 so that he could represent them. Ms Kambamba stated that the defendants are not in position to give that much money to Mr Mbaeva at such short notice. The defendants, therefore, want the matter to be postponed to enable them to find another lawyer. The defendants insisted that Mr Mbaeva ceases to represent them. After the court had explained to the defendants their rights in terms of the law and procedure, and having confirmed they have understood such rights and that they insist on terminating the mandate of Mr Mbaeva to represent them, the court granted Mr Mbaeva leave to withdraw as defendants’ legal representative.

[13] Thereafter the defendants requested postponement of the trial on account that they are not legally represented and wish to have opportunity to engage services of a legal practitioner. The court invited the defendants to show cause why a postponement should be granted in the circumstances. After hearing both parties on the issue, the court declined to grant a postponement on account that the defendants have not shown reasonable cause for granting a postponement in the circumstances. The court, therefore, directed that trial proceeds.

[14] After hearing some submissions regarding interpretation services in respect of some defendants, the matter was postponed to 14 May 2020 for continuation of trial.

[15] On the 14 May 2020, it was reported that the defendants have enlisted the services of Mr Awaseb as their legal representative of record. In his address to the court, Mr Awaseb requested that the trial dates be vacated and a postponement of trial

be granted in favour of the defendants to enable him to prepare for trial. After hearing submissions on the issue, from both sides, the court decided that no acceptable reasons have been put forth on the part of the defendants, entitling them to a postponement, in the circumstances. The court then ordered that trial proceeds as was previously scheduled.

The evidence

[16] The plaintiff, Endobo Properties CC, called three witnesses, namely Hermanus Christoffel Groenewald (“Mr Groenewald”), Robert Siyave (“Mr Siyave”) and Francois Adries Pretorius (“Mr Pretorius”).

[17] Mr Groenewald testified that he is the sole member of the plaintiff. The plaintiff is the owner of the following immovable property, namely:

Certain: Portion 64 (a portion of portion B) of the farm Town of Tsumeb No.103

Situate: In the Registration Division “B”, Oshikoto Region,

Measuring: 7,5953 hectares,

Held under: Deed of Transfer No.T.3258/2006.

[18] The aforesaid land has been laid out as a township in accordance with *General Plan S.G No.A821/2001*, as more full appears under an endorsement in terms of *section 46(3) of the Deeds Registries Act No. 47 of 1937*, endorsed on the aforesaid title. According to Mr Groenewald, there are about 159 residential units on the property and that the plaintiff obtains annual compliance certificates from the Municipal Council of Tsumeb in respect of the premises and he tendered proof of the same in evidence.

[19] As proof of plaintiff’s ownership of the property, Mr Groenewald tendered into evidence a copy of Deed of Transfer No T.3258/2006, reflecting the plaintiff as the registered owner of the immovable property in question.

[20] Mr Groenewald testified that the plaintiff had entered into a written lease agreement with each of the defendants. In terms of each lease agreement, each of the defendants agreed to pay monthly rental as stipulated under column 7 of annexure *POC 2*. Rent is payable monthly, in advance on or before the first day of each month, free of any deductions. In the event of breach of the lease agreement, in particular, with regard to payment of rent, the plaintiff is entitled to cancel the lease. In such event each defendant, as tenant, undertook to vacate the premises on the termination date.

[21] According to Mr Groenewald, all defendants are in default of payment of their respective rentals as set out in column 14 of annexure *POC2*. Most of the defendants fell in default of paying rent in May 2017. Mr Groenewald asserted that the instigators of rent-boycott were some tenants and third-parties influencing tenants not to pay rent, on account that the plaintiff is allegedly not the owner of the leased premises.

[22] The plaintiff had served notices on the defendants, calling upon the defendants to honour their lease obligations. None of the defendants complied. Thereafter, the plaintiff issued lease-termination notices, on the defendants.

[23] Mr Groenewald further testified that all that the plaintiff is claiming is an order for eviction. He further adds that as at 6 May 2020, the total outstanding unpaid rental owed by the defendants stands at N\$ 684,360, and the amount increases with N\$ 17 000 per month.

[25] The second witness for the plaintiff, Mr Siyave, testified that he is employed by Rubicon Security Services as a security manager. The owner of Rubicon Security Services is Mr Christo Groenewald.

[26] On 20 October 2017 Mr Siyave was tasked by Mr Groenewald to deliver payment- demand notices to the defendants in this matter at the premises owned by the plaintiff. Upon his arrival at the premises, he was approached by Mr Andreas

Thimbunga (the 18th defendant) who is also the Chairman of Endobo Hostel Committee, who told him to hand-over the notices to him for distribution to the respective defendants. Mr Siyave handed the notices over to Mr Thimbunga.

[27] On 31 October 2017, Mr Siyave was detailed by Mr Groenewald to deliver lease-cancellation notices on the twenty defendants in this matter. He did that however, he was later confronted by a group of angry tenants. He called Mr Groenewald who later arrived. Thereafter, the police was summoned and the police later defused the situation.

[28] The third and last witness for the plaintiff was Mr Pretorius. Mr Pretorius testified that he is a legal practitioner based at Tsumeb. He has been the plaintiff's legal practitioner in respect of plaintiff's litigation against defaulting tenants at the Endobo property.

[29] Mr Pretorius related that he has been practising law in Tsumeb for the past 37 years. Initially he started as a prosecutor, from 1982 to 1986. Thereafter he opened his law firm, FA Pretorius and Company where he still practices. He averred that to his knowledge, there is no *rent board* established for the area of Tsumeb. In terms of *section 35* of the *Rents Ordinance*, the provisions of the Ordinance only apply to a dwelling situated in an area for which a *rent board* has been established.

[30] The defendants called four witnesses, namely Christolene Kambamba ("Ms Kambamba"), Hewatt Beukes ("Mr Beukes"), Immanuel Kativa Shilonda ("Mr Shilonda") and Willem Machayi ("Mr Machayi").

[31] Ms Kambamba is the eighth defendant in this matter. She testified that she is a resident of Endobo compound (the premises) since 2016. Her father had resided on the premises since 2007. He passed away in November 2016. Ms Kambamba approached Mr Groenewald's office in December 2016, in order to lease the unit which was previously let to her late father. She was successful in her quest.

[32] In February 2017, Mr Groenewald distributed notices notifying tenants of rent-increases, to come in effect in April 2017. Upon receipt of those notices, she together with other tenants held a meeting to discuss the issue. According to Ms Kambamba, the meeting resolved to approach Mr Groenewald to request that he renovates the leased premises.

[33] A meeting was later arranged. Mr Groenewald refused and/or failed to renovate the premises. According to Ms Kambamba, she together with some tenants, decided they would no longer pay rent on account that Mr Groenewald refuses to renovate the leased premises.

[34] When cross-examined, Ms Kambamba conceded that she had entered into a lease agreement with the plaintiff on 5 December 2016. She also conceded that in terms of the lease agreement rent is payable monthly, without deduction.

[35] The next witness for the defendants was Mr Beukes. Mr Beukes testified that he is a consultant with the Workers Advice Centre, a registered proprietorship. In 2018 the Workers Advice Centre was instructed by occupants of Endobo Hostel to investigate the validity of the claim of ownership by Mr Groenewald, in respect of Endobo Hostel. The summarized findings of the Workers Advice Centre are that: the hostel previously belonged to Tsumeb Corporation Limited (“TCL”). The purpose of the hostel was to house contractual mine-workers. *TCL* was liquidated in 1998. All assets of *TCL* were taken over by Ongopolo Mining and Processing Limited Company.¹ The same investigation further revealed that the hostel has no approved municipality plans, no compliance certificate, is not designated as habitable and that it is criminal to put people in such a building. When cross-examined, Mr Beukes does not dispute that the plaintiff is the registered owner of the leased premises.²

¹ Pages 133 to 125 of the transcribed record.

² Pages 124 to 128 of the transcribed record.

[36] Mr Shilonda is the 13th defendant. He testified that he is a resident of Endobo compound and has been such resident since 2008. He averred that he used to live with his uncle who worked for a local mine. He described Endobo compound as an old building which was built to house mine-workers during the pre-independence era. Apart from mine-workers, the building also houses employees of other companies such as security guards. In 2012, Mr Shilonda managed to secure accommodation as a tenant of room 188. He as well as some other tenants are unhappy with annual rental increments charged by the plaintiff as landlord, without corresponding renovation being effected to the leased premises. He and other tenants decided to stop paying rent altogether and use the rental money to maintain leased premises. Under cross-examination, Mr Shilonda does not dispute the fact that the plaintiff is holder of the registered title deed in respect of the leased premises. However, he still maintains that the plaintiff is not the owner of the leased premises.

[37] The fourth and last witness for the defendants is Mr Machayi. Mr Machayi is not a tenant, but resides in Endobo hostel in unit number 10B. He testified that he has been a resident of the hostel since 2008. The room he occupies is allocated to his father. His father has been a resident of the hostel since the *TCL* years, when he was employed as a mine-worker.

[38] Mr Machayi narrated that the residents of Endobo hostel comprise of mine-workers, security guards and other low-income households. The inhabitants have established a committee, called Endobo Hostel Committee to cater for their interests. Mr Machayi testified that he is a member of this committee. There are about 266 units whose occupants share communal showers and communal toilets. He describes the general conditions of the hostel as unhygienic.

[39] According to Mr Machayi, in 2009 the Endobo Hostel Committee and other tenants held a meeting with Mr Groenewald to discuss the state of the leased premises. The intention was to request Mr Groenewald to effect renovations on the premises especially the toilets. Mr Groenewald agreed to attend to the renovations. However,

the renovations were not effected. Further, similar meeting were held in 2010 and 2011 with no progress on the required renovations. Some tenants decided to refuse paying rent until renovations were effected.

[40] During closing submissions the plaintiff's counsel Mr Dicks submitted that the plaintiff has discharged the onus resting on it and is entitled to the relief it claims. Counsel further submitted that the defendants be ordered to pay costs including wasted costs of Monday 11 May 2020, Tuesday 12 May 2020 and the afternoon of 14 May 2020 when the trial could not proceed on account of defendants' unpreparedness.

[41] The defendants' counsel Mr Awaseb, submitted that the plaintiff did not discharge the onus on it and that its claim be dismissed with costs. Mr Awaseb further called upon the court to, among other things, order an 'investigation' into the ownership of the leased premises.

Legal principles

[42] An action for eviction may be based on the owner's ownership of a property or on a contract. Where a plaintiffs' claim for eviction is based on ownership, the plaintiff merely has to allege and prove his ownership and the fact that the property is held by another person. The onus is then on that other person (the defendant) to allege and prove a right to stay in possession of the property.³

[43] It is inherent in the nature of ownership that possession of a property should normally be with the owner thereof and as a corollary, no other person may withhold it from the owner, unless that other person is vested with some right enforceable against the owner.⁴

[44] In the case of eviction based on owner's ownership, the owner proves his ownership by handing-in his title deed, indicating that the property is registered in his

³ *Angula v Mavulu* (I 2690/2010) [2014] NAHCMD 250 (22 August 2014) para 17.

⁴ *CP Simth: Eviction and Rental Claims: A practical guide*, para. 1.2.

name. Once the plaintiff succeeds in proving ownership and that the defendant is in occupation of the property, the onus shifts to the defendant to show that his occupation is lawful.⁵

[45] Where an owner acknowledges that the occupier has or had a right of occupation, such as a lease, the onus is on the owner to prove that the right no longer exists or is not enforceable.⁶

Application of the legal principles to the facts

[46] On the evidence presented before the court, the plaintiff claims that it is the owner of the leased premises. The plaintiff further alleges that it has entered into lease agreements with the defendants and that the defendants are in default of rent-payments since 2017. As a result of such default, the plaintiff has cancelled defendants' leases.

[47] The crux of the defendants' defence is that, the defendants dispute plaintiff's ownership of the property. As a second ground of defence, the defendants, in the alternative, allege that the plaintiff did not comply with section 32(1) of the Rent Ordinance, in that the plaintiff did not give the defendants at least 3 (three) months' notice, to vacate the property.

[48] Insofar as the issue of ownership is concerned, the plaintiff has tendered into evidence a copy of Deed of Transfer No.T3258/2006 indicating that the premises in question are registered its name. There is no evidence adduced to the contrary that there is someone else other than the plaintiff who owns the property.

[49] In my view, the existence of the title deed in the name of the plaintiff puts paid to the question of ownership. The plaintiff is the owner of the leased property.

⁵ *Chetty v Naidoo* 1974 (3) SA 13.

⁶ *CP Smith, Op Cit, para 1.3.*

[50] It is common cause that the defendants are in occupation of the premises. The plaintiff, having established ownership of the property, it is then for the defendants to establish their right to be in occupation thereof.

[51] On the evidence, the defendants' right of occupation was based on lease agreements. That right was contingent on the defendants' observance of the provisions of the lease agreements, including payment of rent. In terms of clause 16 of the lease agreements, the plaintiff has the right to cancel the lease agreement forthwith should the defendant(s) fail to pay rent. Furthermore, should the lease be terminated, the defendant(s) undertakes to vacate the premises on or before the termination date. It is not the defendants' defence that they pay rent. Indeed the defendants admit they have stopped paying rent. The plaintiff alleges that it has cancelled the lease agreements on account of the defendants' breach in not paying rent. On the evidence, I find that the defendants are in breach of their lease agreements and that the plaintiff was entitled to cancel the lease agreements in terms of clause 16 of the lease agreements.

[52] During trial, the evidence given on behalf of the defendants seem to raise a new defence (not raised in plea and in the Pre-Trial Order⁷), to the effect that they are entitled to remain in occupation of the property, rent-free, till the plaintiff effect certain renovations on the property. A party has a duty to allege in the pleadings the material facts upon which it relies. It is not permissible for a defendant to plead a particular defence and seek to establish a different defence at trial. It is equally not permissible for the trial court to have recourse to issues falling outside the pleadings when deciding a case.⁸ In the present matter, the defendants do not allege that their continued occupation of the property is in terms of an agreement with the owner of the property. Nor do they advance any legal basis for their continued occupation of the property on rent-free terms.

⁷ In terms of *rule 26 (10)*, issues and disputes not set out in the pre-trial order will not be available to the parties, except with leave of the managing judge or court granted on good cause shown.

⁸ *Minister of Safety and Security v Slabbert* 2010 2 All SA 474 SCA.

[53] As regards the applicability, or otherwise, of *section 32(1)* of the *Rent Ordinance*, *section 35(a)* of the same *Ordinance* provides that the provisions of the Ordinance shall not apply to a “dwelling” situated in an area for which no rent board has been established. Evidence was led on behalf of the plaintiff that no rent board has been established for the area of Tsumeb. Such evidence has not been contradicted. I therefore accept it as a fact that there is no rent board established for Tsumeb area and therefore the provisions of the Ordinance are not applicable to the present matter.

[54] A further defence was raised by the defendants, in a further-alternative, is to the effect that the defendants are entitled to resist the eviction on the ground that the plaintiff was not the owner of the property at the time that the defendants executed their lease agreements. This defence has no merit. I do not know any authority and none was cited to me, in support of the proposition that an owner must have been the owner of the property at the time when a lease agreement is entered into, so that he could succeed in evicting defaulting tenants who occupy his property. That defence has no substance and falls to be rejected.

[55] In regard to the question of costs of suit, I am of the view that the general principle that costs follow the event must find application in this matter. The plaintiff, in addition to costs of suit, prays for wasted costs for the 11 and 12 May 2020 and the afternoon of 14 May 2020, occasioned by defendants’ lack of preparedness to proceed to trial.

[56] It is common cause that trial in this matter could not proceed on the 11 and 12 May 2020 due to the defendants not being ready to proceed to trial. Such time was thus taken-up with multiple applications by the defendants for postponement of trial.

[57] Rule 96(3) states:

'When a matter has been set down for hearing, a party may, on good cause shown, apply to the judge, no less than 10 court days before the date of hearing to have the set down changed or set aside.'

[58] In his recent treatise on Civil Procedure, the *Hon PT Damaseb* has the following to say on the subject of postponements:

'The overriding objective emphasises finalization of matters speedily and at minimum cost. In an environment where the parties themselves determine the time they need to exchange pleadings; where discovery takes place at an early stage and the parties, through witness statements, are fully informed of each party's case, the occasion must be rare where a party is caught by surprise and need more time to prepare. Equally important is the fact the new rules emphasise early preparation and narrowing of the areas of dispute. Postponement must therefore be frowned upon and should be granted only exceptionally.'⁹

[59] The learned author further observes:

'In practice, the reason for seeking a postponement is often the unavailability of instructed counsel, especially where counsel from outside Namibia is engaged. Since *Ecker v Dean* in 1939, Namibian courts have been reluctant to accept that a litigant is entitled to insist on being represented by a particular counsel. Therefore, it will rarely avail a litigant to seek a postponement of a matter solely on the ground that his or her chosen counsel, especially instructed counsel was unavailable to conduct the trial or hearing.'¹⁰

[60] Moreover, *practice direction 62(5)* provides as follows:

'The High Court pursues a 100% clearance rate policy, and in pursuit of the policy, the court must, unless there are compelling reasons to adjourn or vacate, apply a strict non-adjournment or non-vacation policy on matters set down for trial or hearing.'

⁹ *Petrus T. Damaseb: Court-Managed Civil Procedure of the High Court of Namibia*, p244 para 9-127.

¹⁰ *Op Cit* p.245, para 9 - 128 (footnotes omitted).

[61] From the foregoing considerations, it is apparent that parties have a legitimate expectation that trial dates will be met and not be postponed without good reason. Therefore, I am persuaded that the defendants were not justified in their conduct which resulted in the trial not proceeding on the 11 and 12 May 2020. I am therefore satisfied that the plaintiff is entitled to an order for wasted costs against the defendants in respect of the 11 and 12 May 2020. Insofar as the matter did not proceed in the afternoon of 14 May 2020, I am of the opinion that counsel for the defendants gave a reasonable and acceptable explanation why he was not available for the afternoon. For that reason I will not grant an order against the defendants for wasted costs in respect of the afternoon of the 14 May 2020.

Conclusions

[62] In the premises, and subject to what has been stated in the foregoing paragraphs, I am satisfied that on the evidence before court, the plaintiff is entitled to the relief it seeks.

[63] In the result, I make the following order:

1. The cancellation by the plaintiff of the defendant's lease agreements, is hereby confirmed.
2. The defendants and all persons holding under them, are evicted from the respective units listed in column 4 of annexure 'POC2' (annexed to the plaintiff's particulars of claim) and from the immovable property as more fully described in *Deed of Transfer No.T.3258/2006*.
3. Each defendant must vacate the property on or before 30 September 2020, failing which the deputy sheriff for the district of Tsumeb is hereby authorised and directed to evict the defendants and all persons holding under them.

4. The defendants are ordered, jointly and severally, the one paying, the other to be absolved, to pay the costs of suit of the plaintiff, including wasted costs of the 11 and 12 May 2020 and such costs include costs of one instructing and one instructed counsel.
5. The matter is removed from the roll and regarded finalised.

B Usiku
Judge

APPEARANCES:

PLAINTIFF:

Adv. Dicks

Instructed by Francois Erasmus & Partners
Windhoek

DEFENDANT:

Mr Awaseb
Of Awaseb Law Chambers
Windhoek