

HIGH COURT OF NAMIBIA



MAIN DIVISION, WINDHOEK

INTERLOCUTORY RULING

Case Title: ANNALIZE VERMEULEN & ANOTHER // ABRAHAM JACOBUS VERMEULEN	Case No: HC-MD-CIV-ACT-CON-2018/03974 Division of Court: HIGH COURT (MAIN DIVISION)
Heard before: HONOURABLE MR JUSTICE MILLER, ACTING	Date of hearing: 28 September 2020 Delivered on: 23 October 2020
Neutral citation: <i>Vermeulen v Vermeulen</i> (HC-MD-CIV-ACT-CON-2018/03974) [2020] NAHCMD 485 (23 October 2020)	
The order: Having heard Mr Grobler , counsel for the first plaintiff, Mr Louw , counsel for the second plaintiff and Mr Vlieghe , counsel for the defendant and having read other documents filed of record: IT IS ORDERED THAT: <ol style="list-style-type: none"> 1. The exception is upheld. 2. The plaintiffs are granted leave to amend their particulars of claim, should they be advised to do so. 3. The amended particulars of claim, if any, must be filed not later than 14 days from the date of this order. 4. A status hearing is scheduled before the managing judge on 24 November 2020 at 14h15. 5. The plaintiffs shall pay the costs of the defendant, but not exceeding the amount of N\$20 000, and in the case of the second plaintiff to be limited to the time when the second plaintiff tendered the costs of the defendant. 	
Following below are the reasons for the above order:	

[1] The first and second plaintiff issued summons against the defendant. In their particulars of claim, the following relief is sought.

1. That the defendant be found guilty of contempt of court.

2. That the defendant takes immediate steps -

2.1 To register the Montebello No. 9 in the name of the Abba Trust.

2.2 To register a life-long usufruct in favour of the first plaintiff against the title deed of Montebello No. 9 in the name of the Abba Trust.'

[2] There is an additional claim seeking an order that the defendant pays the arrear levies in respect of Montebello No. 9 in the sum of N\$49 805.17 together with ancillary relief and costs.

[3] The defendant excepts to the particulars of claim on the grounds set out in his notice to that effect and dated 3 May 2019.

[4] Although both plaintiffs opposed the matter of the exception, the second plaintiff subsequently conceded that the exception should succeed. The argument before me was limited to the issue of costs, and more particularly whether the costs should be capped at a minimum of N\$20 000.

[5] The first plaintiff persists in opposing the relief being sought by the defendant.

[6] The particulars of claim, upon a reading thereof is with respect not a model of clarity, and he who runs won't read. I refer to only one extract from the particulars of claim. In para 11 thereof it is alleged that 'the conduct of the defendant to register Montebello No. 9 in the name of Pentagon Investment CC and (his) subsequent conduct as set out in para 9 above, is contrary to the settlement agreement that was made an order of court, fraudulent and of no force and effect'.

[7] When the reader turns to para 9 of the particulars of claim, no mention is made of any fraudulent conduct. In fact para 9 deals with an entirely different aspect.

[8] Apart from that, no case is made out in the particulars of claim for the relief claimed in respect of the defendant's alleged contempt of court. Absent is any allegation that the defendant acted intentionally and maliciously by not complying with the court's order. To merely allege that his conduct was fraudulent is not sufficient.

[9] In so far as the remainder of the relief claimed is concerned, it is apparent that the relief is claimed against the defendant in his personal capacity. A reading of the particulars of claim does not support any relief against the plaintiff in his personal capacity. Any relief which may be granted will lie against corporate entities which were not cited as defendants.

[10] It follows that the exception must succeed.

[11] As far as the second plaintiff is concerned, I see no reason why I should depart from the provision of the Rules of the High Court capping the costs at N\$20 000. The defendant submits that by upholding the exception, a major part of the case will be disposed of. That may be so, and I express no firm view on that. That by itself does not warrant a departure from the Rules.

Judge's signature:	Note to the parties:
	Not applicable.
Counsel:	
First Plaintiff	Second Plaintiff
Z Grobler of Grobler & Co., Windhoek	T Louw of Theunissen, Louw & Partners, Windhoek
Defendant	
S Vlieghe of Koep & Partners, Windhoek	