REPUBLIC OF NAMIBIA REPORTABLE

HIGH COURT OF NAMIBIA MAIN DIVISION, WINDHOEK

JUDGMENT

Case No.: HC-MD-CIV-ACT-OTH-2017/02378

In the matter between:

ACASIA RESORTS (PTY) LTD	**PLAINTIFF**
and	
REHOBOTH TOWN COUNCIL	**1st DEFENDANT**
OANOB LIFESTYLE VILLAGE	**2nd DEFENDANT**
OANOB DAX INVESTMENT CC	**3rd DEFENDANT**
NAMIBIA WATER CORPORATION	**4TH DEFENDANT**
THE REGISTRAR OF DEEDS REHOBOTH DEEDS OFFICE	**5th DEFENDANT**
THE GOVERNMENT OF THE REPUBLIC OF NAMIBIA	**5th DEFENDANT**

Neutral citation: *Acasia Resorts (Pty) Ltd v Rehoboth Town Council* (HC-MD-CIV-ACT-OTH-2017/02378) [2021] NAHCMD 154 (13 April 2021)

Coram: PARKER AJ
Heard: **8 March 2021**
Delivered: **13 April 2021**

Flynote: Practice – Absolution – At close of plaintiff's case – Court applying trite test – Whether reasonable Court satisfied that plaintiff established prima facie case requiring answer from defendants – Court held that in considering whether plaintiff established prima facie case court ought to keep in mind the pleadings and the law applicable – Court held further that oral evidence is not the only means of establishing proof.

Summary: Practice – Absolution – At close of plaintiff's case – Court applying trite test – Court finding that on the pleadings and the applicable law the fountain head of the instant proceedings in the sense that all else must drink from it in pursuit of the claim by plaintiff and in defence of the claim by defendant – Court finding in that regard there existed a valid, enforceable and enforced lease and it has existed intact and undisturbed for over a quarter of a century – Court concluding therefrom that plaintiff entitled to seek protection of its common law contractual rights and article 16 (of the Namibia Constitution) right by mandatory and interlocutory relief – Court finding that plaintiff had made out a prima facie case requiring answer from defendants – Consequently, court dismissing absolution application with costs.

ORDER

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1. The applications for absolution from the instance are dismissed with costs in favour of plaintiff against the third defendant and first, fifth and sixth defendants, and such costs shall include costs of one instructing counsel and two instructed counsel in each case.

2. As to wasted costs –

   (a) first, fifth and sixth defendants shall pay the plaintiff's costs for the afternoon of 22 February 2021 and the court day of 24 February 2021; and such costs shall include costs of one instructing counsel and two instructed counsel; and

   (b) first, fifth and sixth defendants shall pay the third defendant's wasted costs for the afternoon of 22 February 2021 and the court day of 24 February 2021, and such costs shall include costs of one instructing counsel and two instructed counsel.

3. The matter is postponed to 16 April 2021 at 10H00 for a status hearing to enable the court to determine the further conduct of the matter, including the allocation of dates for continuation of trial.

RULING

PARKER AJ:

[1] Before the court is a case concerning primarily a dispute about whether there exists a valid and enforceable lease. The central and foundational issue at the bone and marrow of the present matter in the instant proceedings is in words of one syllable this: whether there exists a valid lease. It follows reasonable that the determination as to whether it is *established to a prima facie degree* (emphasized for obvious reasons) at the close of plaintiff's case that there exists a valid lease should be the burden of the court at the present stage of the proceedings, that is, at the stage of absolution from the instance ('absolution' for short) at the close of plaintiff's case. And in pursuit of that enquiry and taking into account the absolution application, I think we need to go back to the basics concerning (a) the law of contract, and (b) the law of evidence. We shall discuss items (a) and (b) in due course.

[2] In the present matter, there is one plaintiff, namely, Acasia Resorts (Pty) Ltd ('Acasia') and six defendants, namely, first defendant: the Rehoboth Town Council ('the Town Council'); second defendant: Oanob Lifestyle Village, a close corporation (Oanob Lifestyle'); third defendant: Namibia Water Corporation; fifth defendant: the Registrar of Deeds, Rehoboth Deeds Office; and sixth defendant: the Government of the Republic of Namibia (GRN'). Mr R Heathcote SC (with Mr R Maasdorp) represents plaintiff; Mr Tötemeyer SC (with Mr G Dicks) represents third defendant; and TC Mr Phatela represents first, fifth and sixth defendants ('the governmental defendants'). It is worth noting that second defendant and fourth defendant have not taken part in these proceedings. They were served with process; and so, they are bound, like the other parties by the decision of the court. I have considered the

authorities referred to the court by counsel. I am grateful for their commendable industry.

[3] So it was that at the close of plaintiff's case third defendant on the one hand and the governmental defendants on the other brought separate absolution applications; and they were all heard together at the same time. The effect of the fact that the applications were brought by two different sets of defendants and heard together at the same time will receive appropriate treatment in due course.

[4] On the test of absolution at the close of plaintiff's case I think it wise and appropriate to rehearse what I said in *Neis v Kasuma* HC-MD-CIV-ACT-CON-2017/000939 [2020] NAHCMD 320 (30 July 2020), where the authorities are gathered. I stated thus:

'[1] …:

'[6] The test for absolution from the instance has been settled by the authorities. The principles and approaches have been followed in a number of cases. They were approved by the Supreme Court in *Stier and Another v Henke* 2012 (1) NR 370 (SC). There, the Supreme Court stated:

> "[4] At 92F-G, Harms JA in *Gordon Lloyd Page & Associates v Rivera and Another* 2001 (1) SA 88 (SCA) referred to the formulation of the test to be applied by a trial court when absolution is applied at the end of an appellant's (a plaintiff's) case as appears in *Claude Neon Lights (SA) Ltd v Daniel* 1976 (4) SA 403 (A) at 409 G-H:
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> ". . . when absolution from the instance is sought at the close of plaintiff's case, the test to be applied is not whether the evidence led by the plaintiff establishes what would finally be required to be established, but whether there is evidence upon which a Court, applying its mind reasonably to such evidence, could or might (not should, or ought to) find for the plaintiff. (*Gascoyne v Paul and Hunter* 1917 TPD 170 at 173; *Ruto Flour Mills (Pty) Ltd v Adelson* (2) 1958 (4) SA 307 (T).)"
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> Harms JA went on to explain at 92H - 93A:
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> "This implies that a plaintiff has to make out a prima facie case — in the sense that there is evidence relating to all the elements of the claim — to survive absolution because without such evidence no court could find for the plaintiff (*Marine & Trade*

Insurance Co Ltd v Van der Schyff 1972 (1) SA 26 (A) at 37G-38A; *Schmidt Bewysreg* 4 ed at 91-2). As far as inferences from the evidence are concerned, the inference relied upon by the plaintiff must be a reasonable one, not the only reasonable one (Schmidt at 93). The test has from time to time been formulated in different terms, especially it has been said that the court must consider whether there is "evidence upon which a reasonable man might find for the plaintiff" (Gascoyne (loc cit)) — a test which had its origin in jury trials when the "reasonable man" was a reasonable member of the jury (*Ruto Flour Mills*). Such a formulation tends to cloud the issue. The court ought not to be concerned with what someone else might think; it should rather be concerned with its own judgment and not that of another "reasonable" person or court. Having said this, absolution at the end of a plaintiff's case, in the ordinary course of events, will nevertheless be granted sparingly but when the occasion arises, a court should order it in the interest of justice. . . ."

'[7] Thus, in *Dannecker v Leopard Tours Car & Camping Hire CC* (I 2909/2006) [2015] NAHCMD 30 (20 February 2015), Damaseb JP stated as follows on the test of absolution from the instance at the close of plaintiff's case:

"The test for absolution at the end of plaintiff's case

[25] The relevant test is not whether the evidence led by the plaintiff established what would finally be required to be established, but whether there is evidence upon which a court, applying its mind reasonably to such evidence, could or might (not should or ought to) find for the plaintiff. The reasoning at this stage is to be distinguished from the reasoning which the court applies at the end of the trial; which is: 'is there evidence upon which a Court ought to give judgment in favour of the plaintiff?'

"[26] The following considerations (which I shall call 'the Damaseb considerations') are in my view relevant and find application in the case before me:

(a) Absolution at the end of plaintiff's case ought only to be granted in a very clear case where the plaintiff has not made out any case at all, in fact and law;

(a) The plaintiff is not to be lightly shut out where the defence relied on by the defendant is peculiarly within the latter's knowledge while the plaintiff had made out a case calling for an answer (or rebuttal) on oath;

(b) The trier of fact should be on the guard for a defendant who attempts to invoke the absolution procedure to avoid coming into the witness box to answer

uncomfortable facts having a bearing on both credibility and the weight of probabilities in the case;

(c) Where the plaintiff's evidence gives rise to more than one plausible inference, anyone of which is in his or her favour in the sense of supporting his or cause of action and destructive of the version of the defence, absolution is an inappropriate remedy;

(d) Perhaps most importantly, in adjudicating an application of absolution at the end of plaintiff's case, the trier of fact is bound to accept as true the evidence led by and on behalf of the plaintiff, unless the plaintiff's evidence is incurably and inherently so improbable and unsatisfactory as to be rejected out of hand".'

[5] It is gleaned from *The Namibian Law Reports*: 1990-2020 that there are 12 reported cases on application for absolution at the close of plaintiff's case that were dealt with by the High Court and the Supreme Court. In all those 12 cases, the application was brought following upon plaintiff having adduced viva voce evidence and closed his or her case. Third defendant and the governmental defendants brought their individual and separate absolution application after plaintiff had closed its case without adducing viva voce evidence. What is before us in the instant proceeding appears, therefore, to be a textbook example of a first impression case.

[6] I have made this pertinent remark to arrive at this relevant conclusion concerning the test of absolution at the close of plaintiff's case: The factors proposed by the authorities, particularly with regard to evidence, ought for the sake of reasonableness to be applied in particular cases with the necessary modifications and adaptations allowed by the width of the principles. The factors should not be applied mechanically and ritualistically without due regard to the facts and circumstances of the particular matter; mind you, the factors are borne out of general principles. Besides, although the factors provide a useful guide, they should not be treated as if they were prescribed by statute. With these conclusions in my mind's eye I proceed to the next level of the enquiry.

[7] Generally, the plaintiff would make out a prima facie case on the evidence, that is, oral evidence, that plaintiff has adduced. But that cannot be the only way. In my view, whether only viva voce evidence should be adduced to make out a prima

facie case depends largely on whether the matter to be proved rests on a question of fact only. In that regard, it was said in *The President of the Republic of Namibia and Others v Vlasiu* 1996 NR 36 at 45B that matters of fact are capable of proof and are the subject of evidence adduced for that purpose. The question of law on the other hand is a question that ought to be answered by applying relevant legal principles to interpret the law. Indeed, evidence in the form of oral statements made in court under oath or by affirmation or upon warning, ie oral evidence, is not the only means of establishing proof. (See PJ Schwikkard, *Principles of Evidence* (1997) p 16.)

[8] In the present proceeding, the plaintiff sues on the lease agreement annexed to its pleadings in compliance with r 45 (7) of the rules of court. And, as I have said previously, the fountainhead of the dispute in the instant matter is whether there exists a valid contract. Thus, the sole and fundamental question is whether there exists a valid lease agreement; and that is a question of law to be determined by the application of legal principles (*Vlasiu*). In that regard, I make this important point which is crucial in the determination of the instant matter. The lease agreement forms part of the record of these proceedings; and, as I have said, it was filed of record in order to comply with the peremptory provisions of r 45 (7) of the rules of court. Mr Heathcote spoke to it and explained it in detailed material to the end that the lease is valid before closing the plaintiff's case.

[9] I have said more than once that a determination as to whether the lease is valid is the fountainhead of the instant proceeding, in the sense that all else must drink from it in pursuit of the claim by the plaintiff and in defence of the claim by the defendants. The question whether a valid lease exists is indubitably a question of law, as I have held. That being the case, I think Mr Heathcote took the proper cause when counsel decided to close plaintiff's case without adducing *oral* evidence. The adjective 'oral' is italicized for emphasis. It is to underlinen; for, I have held previously that oral evidence is not the only means of establishing proof. Counsel could not adduce extrinsic evidence of the lease without attempting to defeat the law. (Phipson, *The Law of Evidence* 9th ed (1966) at para 1765; quoted in GD Nokes *An Introduction to Evidence* 4th ed (1967) p 241)

[10] Accordingly, the next level of the enquiry is devoted to considering whether there exists a valid lease. Recalling what I said in para 1 above about the need to go to the basics, I think the time has come to go to those basics. For there to be a valid lease, the essentials are for (a) the parties to be determined; (b) the property to be determined; (c) the length of the term and the date of its commencement to be determined; and (d) the rent to be determined. (See *Harvey v Pratt* [1995] 2 All ER 786.) Jurisprudentially, these cardinal elements are substantially and basically the same as those proposed by WE Cooper, *Landlord and Tenant* 2nd ed (1994), referred to the court by Mr Tötemeyer.

[11] I accept Mr Tötemeyer's submission, relying on W E Cooper, *Landlord and Tenant*, ibid, that the parties must agree all the elements before a binding lease is concluded. As respects the lease under consideration, I find that the parties did agree all the essential elements of the lease, and they signified their agreement by their signatures, that is, the signatures of their representatives. (R H Christie, *The Law of Contract in South Africa*, 3rd ed (1996) pp 125-100; and the cases there cited) Indeed, all the written items stated in the lease form part of the written document; and so, the lease represents the written evidence of the agreement made. What is more, the contents and provisions of the lease cover all the essential elements of a lease (discussed previously).

[12] It can, therefore, be safely said that the parties' 'minds did meet and that they contracted in accordance with what the parties purported to accept as a record of their agreement'. (R H Christie, *The Law of Contract in South Africa*, ibid p 23) It should be remembered also, Christie writes, 'in practice, it is the manifestation of their (ie, the parties') wills and not the unexpressed will which is of importance'. 'In the result', wrote the learned author in conclusion, 'it is correct to say that in order to decide whether a contract exists one looks first for the true agreement of two or more parties, and because such agreement can only be revealed by external manifestations one's approach must necessity be generally objective.' (Loc cit)

[13] Furthermore, in *South African Railways and Harbours v National Bank of South Africa Ltd* 1924 AD 704 at 715 Wessels JA stated:

'The law does not concern itself with the working of the minds of parties to a contract, but with the external manifestation of their minds. Even therefore if from a philosophical standpoint the minds of the parties do not meet, yet, if by their acts their minds seem to have met, the law will, where fraud is not alleged, look to their acts and assume that their minds did meet and that they contracted in accordance with what the parties purport to accept as a record of their agreement. This is the only practical way in which Courts of law can determine the terms of a contract.'

[14] Bearing in mind the foregoing authorities on the essentials of a valid lease, I find the following to be established:

(a) the parties are: The Government of the Republic of Namibia the lessor, and Acasia Resorts (Pty) Ltd (company No. 92/442), the lessee.

(b) The property is:

'2.1.1 The Reminder of the farm Sandputz No. 50
Situate in Registration Division M
Measuring 2485,974 hectare
indicated as Area 1 on the annexed Plan No. 17/9/2/13 – 2RO,
attached to this agreement and marked as Annexure E;

2.1.2 Certain portion of the firm Sandputz No. 50
Situate in Registration Division M
Measuring 374,026 hectare as indicated by diagram No. A 896/88
Indicated as Area 2 on the annexed Plan No. 17/9/2/13 – 2RO,
Attached to this agreement and marked as Annexure E;

2.1.3 Certain Portion 31 of the farm Rehoboth Dorpsgrond No. 302
Situate in Registration Division M
Measuring 1518,397 hectare as indicated by Diagram No. A 897/8….
(excluding the Area X = 146 hectare)
indicated as Area 3 on the annexed Plan No. 17/9/2/13 – 2RO,
Attached to this agreement and marked as Annexure E;

2.1.4 Certain Portion of the farm Rehoboth Dorpsgrond No. 302
Situate in Registration Division M
Measuring 2023,959 hectare
indicated as Area 4 on the annexed Plan No. 17/9/2/13 – 2RO,
attached to this agreement and marked as Annexure E;

‘2.2 The areas leased as indicated in paragraph 2.1.1, 2.1.2, 2.1.3, and 2.1.4 are hereinafter referred to as “THE AREA”, and comprise a combined area of 6256,392 hectares.’

(c) The length of the term and the date of its commencement are these. ‘3.1: This lease shall commence on the 1st day of December 1994 and shall continue for a period of 50 (fifty) years from and including such date’. Additionally, ‘3.2: The lessee shall at the conclusion of (the) said period of 50 (fifty) years period have an option to renew this lease for a further period of 50 (fifty) years each’ upon certain provisos set out in paras 3.2.1, 3.2.2, and 3.2.3.

(d) the basic rent payable by the lessee to the lessor is N$12 000 per year, and they are recorded also conditions and mechanisms concerning the rent certain.

[15] Having considered the lease and having applied the aforementioned authorities, I am satisfied that prima facie proof has been furnished to the effect that there exists a lease concluded by the parties and that, as I have held previously, the written document (ie the lease) establishes the parties’ transaction. (See R H Christie, *The Law of Contract in South Africa*, ibid p 213; and the cases there cited.) The lease satisfies the essential elements of a lease; and so, there is a valid transaction: There is an agreement between the parties’ minds agreeing on the same terms – *consensus ad idem.* In sum, I hold that there is a concluded lease; and, *a fortiori*, the lease has existed as a valid and enforced lease for over a quarter of a century intact and undisturbed.

[16] In all this an important aspect is this; and it must be signalized: One of the parties to the lease, the lessor, is the Government, not some close corporation whose members are simple and illiterate persons who, for lack of education and resources, did not know for 27 years what to do about what in their view is not a valid lease. I dare say, and with the greatest deference to the Government, the Government’s conduct in these proceedings speaks volumes. It is unfortunate and unwholesome for so many reasons – too many to mention – for the Government to team up with a private entity, which is a total stranger to the agreement, against another private entity, which is a party to the agreement, to challenge the validity of

an agreement which the Government itself concluded and upon – one can safely say – all the legal advice that is always available to the Government – from that of the Honourable Attorney General to that of the lowest ranking legal officer in the Attorney-General's Chambers. The candid thought cannot be discounted that in this matter the Government has received bad advice. And we must not overlook the fact that the fifth respondent, one of the governmental defendants who must know, admits the agreement, as Mr Heathcote submitted.

[17] Be that as it may, from the foregoing enquiry and conclusions it can be gathered that the court is alive to the fact that the burden of establishing proof of the lease lies on the plaintiff. The court has found that plaintiff has discharged that burden to a prima facie degree. The third defendant and the governmental defendants have denied the existence of the lease agreement. They have not been content with a mere denial: they have set up special defences. For that reason, we need to go back to the basics once more, this time on the law of evidence.

[18] In their *Principles of Evidence* (1997) pp 400-401, the learned authors P J Schwikkard *et al* state: 'The burden of proof lies with him who asserts, but if a party sets up a special defence, the onus of proving that defence is on the party who raises it.' It follows that for the special defences raised by third defendant and the governmental defendants, third defendant and the government defendants bear the onus of proving those defences. (*Pillay v Krishna* 1946 AD 946; approved by the full bench of the court in *Republican Party of Namibia and Another v Electoral Commission of Namibia and Others* 2010 (1) NR 73 (HC); applied in *Taapopi v Ndafediva* 2012 (2) NR 599 (HC))

[19] Indeed, it has been said that when the validity of the document or transaction which it embodies is attacked, extrinsic evidence is admissible to show the invalidity. (J D Nokes, *Introduction to Evidence*, 4th ed (1967) p 244) I, therefore, accept Mr Tötemeyer's submission that even though third defendant is a stranger to the lease it is entitled to challenge the validity of the lease on the basis that it is a party to the proceedings in which the validity of the lease is enquired into and a decision that it is valid would affect third defendant's interests.

[20] I do not intend to list all the third defendant's and the governmental defendants' special defences. Suffice to note that one of such defences is that the lease has not been registered and, therefore, it has no effect against third parties, including third defendant, unless certain conditions precedent were satisfied. That defence is relevant to the order of mandamus sought by plaintiff to compel fifth respondent to register the lease. The court has held that there is prima facie proof that a valid lease exists. In that regard, if the prima facie proof became conclusive proof at the end of the trial and fifth defendant were compelled by mandamus to register the lease, such order would not prohibit fifth defendant in exercise his statutory powers from considering the application to register by plaintiff on the basis of the relevant provisions of the Deeds Rehoboth Amendment Act 35 of 1994. That is up to fifth defendant. Neither the court nor the other parties administer the Act. Additionally, plaintiff seeks interdictory relief against first defendant, second defendant, and third defendant.

[21] At this stage and in virtue of the court's finding that prima facie proof of a valid lease has been furnished, plaintiff should be entitled in the end, if the prima facie proof became conclusive proof, to the mandatory relief and interdictory relief sought – all things being equal – to protect its common law contractual rights and article 16 (of the Namibian constitution) right. (*PIS Security Services CC v Chairperson of the Central Procurement Board of Namibia* [2021] NAHCMD 113). Thus, whether certain common law and statutory obstacles might stand in the way of plaintiff in its application to register the lease should not detain the court and should not be the concern of the court.

[22] In that regard, I should say, any interpretation and application of a provision of any legislation and any common law rule with regard to the instant matter must pay obeisance to the interpretation of the constitutional provision in art 16 of the Namibian Constitution so that the Constitution, being the supreme law, is not interpreted with reference to such provisions of 'ordinary legislation' and the common law (see *Agnes Kahimbi Kashela v Katima Mulilo Town Council and Seven Others* Case No. SA 15/2017 (judgment: 16 November 2018) para 59 and the common law.

[23] Doubtless, the obstacles that may stand in the way of plaintiff mentioned in para 21 above cannot on any pan of legal scales be grounds that are capable of tilting the scales of discretion in favour of granting absolution. It should be remembered, at this stage of the proceedings, '[t]he reasoning at this stage (of absolution application) is to be distinguished from the reasoning which the court applies at the end of the trial; which is; is there evidence upon which a court ought to give judgment in favour of the plaintiff?' (*Dannecker v Leopard Tours Car & Camping Hire CC* (I2909/2006) [2015] NAHCMD 30 (20 February 2015) para 25)). In that regard, I considered also what plaintiff placed before the court in relation to the pleadings and the applicable law. (See *Bidoli v Ellistron t/a Ellistron Truck & Plant* 2002 NR 451 (HC).)

[24] Based on the foregoing analysis and conclusions thereanent, I come to the conclusion that the occasion has not arisen for this court – in the interest of justice – to make an order granting absolution from the instance at the close of plaintiff's case. I am satisfied that plaintiff has made out a prima facie case for the relief sought, requiring answer from defendants (see *Stier and Another v Henke*). In that regard, I should say, it is well settled that the trite test of absolution is whether the court is satisfied that plaintiff has established a prima facie case requiring answer from the defendant. If the court is so satisfied, absolution should be refused (*Stier and Another v Henke*); and it is refused.

[25] It remains the question of costs. Of course, costs ought to follow the event in the absolution application. Then there is the matter of wasted costs. Plaintiff seeks wasted costs for the afternoon of 22 February 2021 and the court day 24 February 2021 against the governmental defendants; so, does third respondent. The wasted costs were occasioned by the governmental defendants' disobedience of the court's order to discover certain documents. Mr Phatela's submission in that regard is that the governmental defenders tried very hard to discover the documents; and so, they should not be mulcted in wasted costs. I have no reason not to accept the veracity counsel's submission about the fruitless efforts of the governmental defendants. But if **X** is ordered by the court to act in a certain way and **X** fails to so act, **X**'s reason for not so acting is immaterial and irrelevant. **X**'s reason, if accepted by the court, may only persuade the court not to make a punitive costs order for **X**'s disobedience of its

order. But, at all events, plaintiff and third defendant do not seek a punitive costs order.

[26] In the result, I order as follows:

1. The applications for absolution from the instance are dismissed with costs in favour of plaintiff against the third defendant and first, fifth and sixth defendants, and such costs shall include costs of one instructing counsel and two instructed counsel in each case.

2. As to wasted costs –

(a) first, fifth and sixth defendants shall pay the plaintiff's costs for the afternoon of 22 February 2021 and the court day of 24 February 2021; and such costs shall include costs of one instructing counsel and two instructed counsel; and

(b) first, fifth and sixth defendants shall pay the third defendant's wasted costs for the afternoon of 22 February 2021 and the court day of 24 February 2021, and such costs shall include costs of one instructing counsel and two instructed counsel.

3. The matter is postponed to 16 April 2021 at 10H00 for status hearing to enable the court to determine the further conduct of the matter, including the allocation of dates for continuation of trial.

C PARKER

Acting Judge

APPEARANCES:

PLAINTIFF:	Mr R HEATHCOTE SC (with Mr R Maasdorp) Instructed by Shikongo Law Chambers, Windhoek
FIRST, FIFTH & SIXTH DEFENDANTS:	T C PHATELA Instructed by the Government Attorney, Windhoek
THIRD DEFENDANTS:	R TÖTEMEYER SC (with Mr G Dicks) Instructed by Dr Weder, Kauta & Hoveka Inc., Windhoek