

REPUBLIC OF NAMIBIA



HIGH COURT OF NAMIBIA MAIN DIVISION, WINDHOEK

JUDGMENT

Case no: HC-MD-CIV-ACT-CON-2020/02921

In the matter between:

FIRST NATIONAL BANK OF NAMIBIA

PLAINTIFF

and

NAN VON SCHACH

DEFENDANT

Neutral citation: *First National Bank of Namibia v Nan Von Schach* (HC-MD-CIV-ACT-CON-2020/02921) [2021] NAHCMD 493 (26 October 2021)

Coram: UEITELE J

Heard: 09 SEPTEMBER 2021

Delivered: 26 October 2021

Flynote: Practice — Pleadings — Summons — Service — Validity — contractually chosen *domicilium citandi et executandi* — Where specific method of effecting service contractually agreed, that method to be strictly complied with.

Contract – Default judgment application - Service of summons in terms of Rule 8(2) (d) - Service of summons is not in accordance with the rules of Court, because the return of service does not indicate how the summons was left at the defendant's alleged *domicilium* - Service of the summons was therefore not in accordance with the rules of Court - Application for default judgment refused in chambers.

Summary: The plaintiff, in its particulars of claim, alleges that during June 2017 and August 2018 it and the defendant concluded three separate agreements. The plaintiff alleges that the first agreement was a Personal Loan Agreement concluded at Windhoek on 20 June 2017. It further alleges that in terms of the Personal Loan Agreement the plaintiff agreed to lent and advanced a loan in the amount of N\$ 88 000 to the defendant. The second agreement is in respect of credit card facility which the plaintiff alleges that during June 2017 it agreed to make the facility available to the defendant and the third agreement is in respect of overdraft facility which the plaintiff alleges that during August 2018 it agreed to make the overdraft facility available to the defendant. Alleging that the defendant breached the agreements she concluded with plaintiff by failing to make repayments in respect of the personal loan, the credit card and overdraft facilities, the plaintiff on 07 July 2020 issued summons out of the High Court. In the summons the plaintiff claims payments from the defendant in the respect of the personal loan, the credit card and overdraft facilities.

On 24th March 2021 the deputy Sherriff served the summons. The summons according to the return of service was served in terms of rule 8(2) (d) of the High Court of Namibia, by leaving a copy of the Combined Summons together with the Particulars of Litigates at the premises Erf 5152, Unit 43, Zanzibar Court, Zanzibar Street, Otjomuise. Windhoek, being the *Chosen Domicilium Citandi Et Executandi* of the Defendant, Nan Von Schach.

On the 29th of June 2021, the plaintiff applied for default judgment and set the matter down on the second motion court roll (that is the roll for undefended claims). The matter was allocated to me for me to deal with the plaintiff's undefended claim. On the 08th of July 2021 and in chambers in the absence of the parties, I refused default judgment on the basis that the service of summons is not in accordance with the rules of Court, because the return of service does not indicate with whom the summons was left at the defendant's alleged *domicilium*.

The plaintiff was not happy with the Order that I issued out of Chambers in their absence and placed the matter on my case management roll of 13 August 2021. On that day I indicated that, I am in terms of Rule 103, prepared to consider any arguments against the Order I made on 08 July 2021, I accordingly set down the

matter for 09 September 2021 to hear arguments in respect of the proper interpretation of Rule 8(2) (d).

Held that the courts and more so the Supreme Court has indicated that the purpose of service is to notify the person to be served of the nature and contents of the process of court and to provide proof to the court that there has been such notice.

Held that rule 8(2) (d) proceeds and state that if the person to be served has chosen a *domicilium citandi*, by delivering or leaving a copy thereof at the domicile so chosen.

Held further that the rules do not define the words '*delivering*' or '*leaving*' and since there is no guidance in the rules themselves to the interpretation of the words '*delivering*' or '*leaving*', the court is of the view that the meaning of the words *deliver* or *leave* must be considered within the context of the rule and the purpose of the rule.

Held further that the court is of the view that the context within which rule 8 (2) (a) (b) (c) and (e) is drafted is that the court process has to be delivered or left with a natural person. It therefore follows that the words *deliver* or *leave* as used in rule 8(2) (d) must, on the basis of the *noscitur a sociis* rule, take their colour and character from the words in the other subrules and must also be given meaning within the context of the rule and the purpose for which the rule is drafted, namely to notify the concerned person of the court process.

Held furthermore that in the present matter the Deputy Sherriff simply states that he served the combined summons by leaving them at the *domicilium* chosen by the defendant. He does not tell the Court how he left the summons there, was the place inaccessible or was the place abandoned or were there people and the people who were there did not want to accept service. The court thus concluded that on the facts of this case the service of the summons was not in accordance with the rules.

ORDER

The service of the summons was not in accordance with the rules of Court and the matter is removed from the roll.

JUDGMENT

UEITELE J:

Introduction

[1] This matter concerns the interpretation of Rule 8 of the Rules of the High Court of Namibia specifically rule 8(2) (d). The parties in this matter are the First National Bank of Namibia Limited as the plaintiff and Nan Von Schach as the defendant. I will refer to the First National Bank as the plaintiff and to Nan Von Schach as the defendant in this judgment.

[2] The plaintiff, in its particulars of claim, alleges that during June 2017 and August 2018 it and the defendant concluded three separate agreements. The plaintiff alleges that the first agreement was a Personal Loan Agreement concluded at Windhoek on 20 June 2017. It further alleges that in terms of the Personal Loan Agreement the plaintiff agreed to lent and advanced a loan in the amount of N\$ 88 000 to the defendant. The second agreement is in respect of credit card facility which the plaintiff alleges that during June 2017 it agreed to make the facility available to the defendant and the third agreement is in respect of overdraft facility which the plaintiff alleges that during August 2018 it agreed to make the overdraft facility available to the defendant.

[3] Alleging that the defendant breached the agreements she concluded with plaintiff by failing to make repayments in respect of the personal loan, the credit card and overdraft facilities, the plaintiff on 07 July 2020 issued summons out of the High Court. In the summons the plaintiff claims payments from the defendant in respect of the personal loan, the credit card and overdraft facilities.

[4] On 21 January 2021 the plaintiff filed a return of non-service which states that:

‘On the 18th day of January 2021 at 11:05 PROCESS IS RETURNED HEREWITH:
The process [that is, the Combined Summons and the Particulars of Claim] could not be served or executed as above address [that is UNIT 43, ZANZIBAR COURT ZANZIBAR STREET, and OTJOMUISE] could not be found.

The process is returned herewith and we await your further instruction, if any.’

[5] On 24th March 2021 the deputy Sherriff served the summons. The Deputy Sherriff, in the Return of Service filed of record explains how he served the summons: The return of service reads as follows, I quote verbatim:

‘I, the undersigned, Wilbur Willemse, do hereby certify that I have on the 24th day of March 2021, at 10:17, in terms of rule 8(2) (d) of the High Court of Namibia, by leaving a copy of the Combined Summons together with the Particulars of Litigates in terms of rule 6 and Particulars of Claim, Annexures “A”- “F”, at the premises Erf 5152, Unit 43, Zanzibar Court, Zanzibar Street, Otjomuise. Windhoek, being the *Chosen Domicilium Citandi Et Executandi* of the Defendant, Nan Von Schach.’

[6] On the 29th of June 2021, (after the period, within which the defendant had to indicate whether or not she will defend the plaintiff’s claim, had expired) the plaintiff applied for default judgment and set the matter down on the second motion court roll (that is the roll for undefended claims). The matter was allocated to me for me to deal with the plaintiff’s undefended claim. On the 08th of July 2021 and in chambers in the absence of the parties, I refused default judgment and cited the following as the reason:

‘The application for default judgement is refused, because the service of summons is not in accordance with the rules of Court, because the return of service does not indicate with whom the summons was left at the defendant’s alleged *domicilium*.’

[7] The plaintiff was not happy with the Order that I issued out of Chambers in its absence and placed the matter on my case management roll of 13 August 2021. On that day I indicated that, I am in terms of Rule 103, prepared to listen to arguments

against the Order I made on 08 July 2021 and if necessary reconsider the Order I made. I accordingly set down the matter for 09 September 2021 to hear arguments in respect of the proper interpretation of Rule 8(2) (d).

Purpose of service of summons.

[8] Before I consider the arguments advanced by Mr Katjivena who appeared on behalf of the plaintiff I make the following preliminary remarks. Justice Smuts in the matter of *Witvlei Meat (Pty) Ltd and Others v Disciplinary Committee for Legal Practitioners and Others*¹ commented that the fundamental purpose of service is after all to bring the matter to the attention of a party, including having the benefit of an explanation as to the meaning and nature of the process.

[9] In the South African case of *Prism Payment Technologies (Pty) Ltd v Altech Information Technologies (Pty) Ltd (t/a Altech Card Solutions) and Others*² it was held that:

‘The purpose of rule 4 [the equivalent of our rule 8] is to provide for a mechanism by which relative certainty can be obtained that service has been effected upon a defendant. If certain minimum standards are complied with as set out in the rule, then the assumption is made that the service was sufficient to reach the defendant's attention and his failure to take steps is not due to the fact that he does not have knowledge of the summons. The converse is not true — namely that if service is not effected as required by the rule, the service is not effective — in that the purpose for which service is required was fulfilled, namely the defendant came to know of the summons. The rules, as was pointed out by Roux J in *United Reflective Converters (Pty) Ltd v Levine* 1988 (4) SA 460 (W), set out procedural steps. They do not create substantive law. Insofar as the substantive law is concerned, the requirement is that a person who is being sued should receive notice of the fact that he is being sued by way of delivery to him of the relevant document initiating legal proceedings. ‘

[10] The Supreme Court in the matter of *Standard Bank Namibia Ltd and Others v Maletzky and Others*³ has crisply said:

¹ *Witvlei Meat (Pty) Ltd and Others v Disciplinary Committee for Legal Practitioners and Others* 2013 (1) NR 245 (HC) para [17].

² *Prism Payment Technologies (Pty) Ltd v Altech Information Technologies (Pty) Ltd (t/a Altech Card Solutions) and Others* 2012 (5) SA 267 (GSJ).

³ *Standard Bank Namibia Ltd and Others v Maletzky and Others* 2015 (3) NR 753 (SC) at para [21].

'The purpose of service is to notify the person to be served of the nature and contents of the process of court and to provide proof to the court that there has been such notice. The substantive principle upon which the rules of service are based is that a person is entitled to know the case being brought against him or her and the rules governing service of process have been carefully formulated to achieve this purpose and litigants should observe them. In construing the rules governing service, and questions whether there has been compliance with them, this fundamental purpose of service should be borne in mind.

[11] Having highlighted what the courts have said is the purpose of serving court process, I will now proceed and briefly state the approach I intend to adopt when interpreting Rule 8(2) (d).

The proper approach to the interpretation of legal documents.

[12] In the matter of *Total Namibia (Pty) Ltd v OBM Engineering and Petroleum Distributors CC*⁴ the Supreme Court authoritatively lays down the principles applicable to the interpretation of documents. O' Regan, who delivered the court's judgment accepted that:

[18] 'Interpretation is the process of attributing meaning to the words used in a document, be it legislation, some other statutory instrument, or contract, having regard to the context provided by reading the particular provision or provisions in the light of the document as a whole and the circumstances attendant upon its coming into existence. Whatever the nature of the document, consideration must be given to the language used in the light of the ordinary rules of grammar and syntax; the context in which the provision appears; the apparent purpose to which it is directed; and the material known to those responsible for its production. Where more than one meaning is possible, each possibility must be weighted in the light of all these factors. The process is objective, not subjective. A sensible meaning is to be preferred to one that leads to insensible or unbusinesslike results or undermines the apparent purpose of the document. Judges must be alert to, and guard against, the temptation to substitute what they regard as reasonable, sensible or businesslike for the words actually used.'

[13] The learned judge proceeded and said:

⁴ *Total Namibia (Pty) Ltd v OBM Engineering and Petroleum Distributors CC* 2015 (3) NR 733 (SC).

[23] ... context is an important determinant of meaning. It also makes plain that interpretation is 'essentially one unitary exercise' in which both text and context, and in the case of the construction of contracts, at least, the knowledge that the contracting parties had at the time the contract was concluded, are relevant to construing the contract. This unitary approach to interpretation should be followed in Namibia.

[24] The approach adopted here requires a court engaged upon the construction of a contract to assess the meaning, grammar and syntax of the words used, as well as to construe those words within their immediate textual context, as well as against the broader purpose and character of the document itself. Reliance on the broader context will thus not only be resorted to when the meaning of the words viewed in a narrow manner appears ambiguous. Consideration of the background and context will be an important part of all contractual interpretation.'

The contentions on behalf of the plaintiff.

[14] I indicated earlier in this judgment that this matter came to me on the second motion court roll for a default judgment. I refused the default judgment on the ground that the summons were not served in accordance with the rules of the High Court.

[15] Mr Katjivena who appeared for the plaintiff contents contrariwise. He submitted that on a simple interpretation of rule 8(2), it is clear that the rule marker intended service to be:

- (a) effected personally on a party or person concerned; or
- (b) where personal service is not reasonably possible, the concerned person may be served through or on another person being apparently not less than 16 years of age who is in charge of the concerned person's residential address; or
- (c) at the place of employment of the person concerned on a person being apparently not less than 16 years of age who is apparently in authority over the person to be served.

[16] Mr Katjivena proceeded and argued that, service may furthermore be effected by delivering or leaving a copy of the document at the person's *domicilium* if the

person to be served has chosen a *domicilium*. He continued and submitted that subrule (4) of rule 8 authorizes service to be effected by affixing a copy of the document at the main door of the chosen *domicilium* or at a place to which the public has access, if no person at the chosen *domicilium* is willing to accept service.

[17] Mr Katjivena continued and argued that there can therefore be no doubt that personal service would always be the ideal manner in which to effect service. It is, however, not always a requirement and is specifically not so in cases where the person has chosen a *domicilium citandi et executandi*. He says in simple terms *domicilium* or *domicilium citandi et executandi* means the address one elects for the purpose of receiving all legal notices and processes. He continued and argued that the purpose of a *domicilium* address is that the parties must not be required to search for one another's whereabouts when wishing to litigate. For this submission he relied on the matter of *Sheppard v Emmerich*⁵, where it was held "that where a specific method of effecting service is contractually agreed, that method should be strictly complied with."

[18] Mr Katjivena furthermore called in aid the case of *Amcoal Collieries v Truter*⁶ where it was held that:

'It is a matter of frequent occurrence that a *domicilium citandi et executandi* is chosen in a contract by one or more of the parties to it. Translated, this expression means a home for the purpose of serving summons and levying execution. (If a man chooses *domicilium citandi* the *domicilium* he chooses is taken to be his place of abode ...). It is a well-established practice ... that, **if a defendant has chosen a *domicilium citandi*, service of process at such place will be good, even though it be a vacant piece of ground, or the defendant is known to be resident abroad, or has abandoned the property, or cannot be found.** (Emphasis by Mr Katjivena).

He continued and argued that the approach set out in the judgment (that is the *Amcoal Collieries v Truter*) is with respect, correct and reflects the position in Namibia.

⁵ *Sheppard v Emmerich* 2015 (3) SA 309 (GJ) at 310 1-J

⁶ *Amcoal Collieries v Truter* 1990(1) SA 1 (A).

[19] The rule that has relevance in this case is rule 8(2)(d) which provides that service may be effected, *'if the person so to be served has chosen a domicilium citandi, by delivering or leaving a copy thereof at the domicilium so chosen.'* Mr Katjivena thus argued that the mode of service allowable in terms of rule 8(2)(d) is by *'delivering'* or *'leaving'* a copy of the process to be served at the *domicilium*. On the papers filed of record, the evidence is clear, uncontroverted and incontrovertible that the defendant has a chosen *domicilium* and that the service was effected at the address in a manner authorised by the rules of court, which was to leave the combined summons at the address so chosen. Mr Katjivena relied on the case of *Naftalie Nathanael Gaoseb and Another v Standard Bank of Namibia Limited and 5 Others*⁷ where it was held that:

'... while *'deliver'* (and its grammatical derivatives) may connote handing over the process to a person at the place of service, *'leave'* (and its grammatical derivatives) connotes the opposite; otherwise the provision would be otiose if *'delivering'* and *'leaving'* were to carry the same meaning, particularly where the disjunctive *'or'*, whose grammatical object is to link alternatives, is used to link *'delivering'* and *'leaving'* in the said rule. Proper service is therefore effected – in the manner of *'leaving'*... when the assistant deputy sheriff, for good and *bona fide* reason, affixed a copy of the process to be served on the applicants on the main front gate of the *domicilium citandi et executandi*.'

[20] Mr Katjivena further argued that rule 8(2) (d) does not require the deputy sheriff to serve on a natural person. He said if service on a natural person was the intention of the rule makers, the rule makers have failed to indicate as such. He argued that in endorsing rule 8(2) (d) the rule maker anticipated, a situation opposite to that contemplated in rule 8(4). Rule 8(4) allows for service by affixing a copy of the process to the main gate of the premises concerned or if this is not accessible, by affixing a copy of the process to any other place to which the public has access only in the instant that no one at the premises is willing to accept service. The key and operating word in terms of rule 8(4) is *"no one is willing to accept service"*.

[21] Mr Katjivena argued that the situation contemplated in rule 8(4) is that the deputy sheriff finds people or persons at the concerned address, however, none are

⁷ *Naftalie Nathanael Gaoseb and Another v Standard Bank of Namibia Limited and 5 Others* A 150/2010.

willing to accept service. The clear distinguishing feature between rule 8(4) and 8(2)(d) is that citation contemplated in rule 8 (2)(d) the deputy sheriff does not find *anyone at the concerned property*, which is mostly the situation the deputy sheriff finds, which is largely to the time gap imposed by the rule of court in terms of service.

[22] Mr Katjivena thus concluded by arguing that service of summons or court process on a *domicilium citandi* chosen by a defendant or respondent is proper service even if he/she is no longer at that address as long as plaintiff and/or applicant has not been notified of the change of *domicilium citandi*. He cites as authority for that proposition the matter of *MLN Extreme Safety Wear CC v Rockstar Footwear (Pty) Ltd*⁸

Discussion

[23] The authorities (the matter of *Naftalie Nathanael Gaoseb and Another v Standard Bank of Namibia Limited and 5 Others* and *MLN Extreme Safety Wear CC v Rockstar Footwear (Pty) Ltd*⁹) to which Mr Katjivena referred me appear to be sound and unassailable. I will, however, point out the difficulties I have with those authorities.

[24] I have earlier on in this judgment indicated that the courts and more so the Supreme Court has indicated that the purpose of service is to notify the person to be served of the nature and contents of the process of court and to provide proof to the court that there has been such notice.

⁸ *MLN Extreme Safety Wear CC v Rockstar Footwear (Pty) Ltd* (I351/2013) [2014] NAHCMD 49 (14 February 2014).

⁹ Also see Herbstein & Van Winsen, *The Civil Practice of the High Courts of South Africa* 5 th edition, Vol. 1, pp 351-352, and the cases there cited, where the learned authors argue that: -

'This subrule adopts the well-established practice according to which, if the defendant has chosen a place as a *domicilium citandi*, service there will be good even though the place is a vacant piece of land. Service at a chosen *domicilium citandi* will be good despite the fact that the defendant is known to be resident abroad or has abandoned the property. The same will apply even if it is impossible to find the defendant, a member of the household or any other person who can be regarded as representing the defendant.'

[25] I furthermore alluded to the fact that the Supreme Court has indicated that interpretation is the process of attributing meaning to the words used in a document, whether it be legislation or some other statutory instrument. The Supreme Court further guided that when seeking to assign a meaning to a word one must have regard to the context provided by reading the particular provision or provisions in the light of the document as a whole and the circumstances attendant upon its coming into existence. Whatever the nature of the document, consideration must be given to the language used in the light of the ordinary rules of grammar and syntax; the context in which the provision appears and the apparent purpose to which it is directed.

[26] Rule 8(a) of the rules envisages service to be effected, by delivering a copy of the court process personally on a party or person (the concerned person), but where the concerned person cannot be personally be served rule 8(2)(b) authorises the process to be served by leaving a copy of the process at the concerned person's residence on another person who must not be less than less than 16 years of age and who is in charge of that residence or if this is still not possible rule 8(2)(c) authorises service to be effected by delivering a copy of the process on the concerned person's place of employment on a person who may not be less than 16 years of age who is apparently in authority over the concerned person.

[27] The rule, in rule 8(2) (d) proceeds and state that if the person to be served has chosen a *domicilium citandi*, by delivering or leaving a copy of the process at the *domicilium* so chosen. Rule 8(2) (e) furthermore authorizes service by delivering a copy of the process to an agent who is duly authorised in writing to accept service on behalf of the concerned person.

[28] The rules do not define the words '*delivering*' or '*leaving*' and since there is no guidance in the rules themselves to the interpretation of the words *delivering*' or '*leaving*', I am of the view that the meaning of the words *deliver* or *leave* must be considered within the context of the rule and the purpose of the rule. In my view the context within which rule 8(2) (a) (b) (c) and (e) is drafted is that the court process has to be delivered or left with a natural person. It therefore follows that the words *deliver* or *leave* as used in rule 8(2) (d) must, on the basis of the *noscitur a sociis* rule, take their colour and character from the words in the other subrules and must

also be given meaning within the context of the rule and the purpose for which the rule is drafted, namely the to notify the concerned person of the court process.

[29] Can it really be said that when one leaves a court process at a vacant piece of land or an abandoned property or an uninhabited property or at a place or property where you know the concerned person does not live, one has given the concerned person notice of the nature and contents of the process of court and must the Court be satisfied that such notice has been given. In my view the answer is a resounding *NO*.

[30] In my view this matter is, on its facts, distinguishable from the matters of *Amcoal Collieries Ltd v Truter*¹⁰, *Naftalie Nathanael Gaoseb and Another v Standard Bank of Namibia Limited and 5 Others*¹¹ and *MLN Extreme Safety Wear CC v Rockstar Footwear (Pty) Ltd*¹² on which Mr Katjivena so heavily relies.

[31] The matter of *Amcoal Collieries Ltd v Truter* concerned the interpretation of a prospecting and mineral option contract, the owner of certain mineral rights granted to a prospector an option to purchase those rights. Clause 11(b) of the contract provided, in connection with the exercise of the option, that it had to be exercised in writing. Clause 15 provided: '*Die partye kies die volgende adresse vir bediening van kennisgewings kragtens hierdie kontrak*: [Loosely interpreted this means '*the parties choose the following address for service of notices in respect of this contract*'..]'. The prospector instructed someone to deliver to the owner a letter giving notice of the exercise by the prospector of its option to acquire the rights in question.

[32] On arrival at the farm indicated in clause 15, the person found the owner absent, and pushed the letter under the door. The prospector subsequently wrote a letter to the owner confirming the exercise of the option but the owner denied that the option had been lawfully exercised. In an application in a Provincial Division the prospector applied for a declaratory order, specific performance and costs. The

¹⁰ *Amcoal Collieries Ltd v Truter* 1990 (1) SA 1 (A).

¹¹ *Naftalie Nathanael Gaoseb and Another v Standard Bank of Namibia Limited and 5 Others* A 150/2010.

¹² *MLN Extreme Safety Wear CC v Rockstar Footwear (Pty) Ltd* (I351/2013) [2014] NAHCMD 49 (14 February 2014).

application was dismissed, the Court finding that the word '*bediening*' in clause 15 meant 'service' of the notice. In an appeal the appellate court held, that, the word '*bediening*' did not connote personal service and that the consequence of a choice of address for service of notices in a contract had in principle to be the same as the choice of *domicilium citandi et executandi*, namely that service at the chosen address was good service whether or not the addressee was present at the time.

[33] The matter of *Naftalie Nathanael Gaoseb and Another v Standard Bank of Namibia Limited and 5 Others* concerned the rescission of a Judgment by default on the basis that it was granted erroneously as the defendants were not served with the summons. The Court concluded that judgment was not erroneously granted as no irregularities have been shown to have been committed in the proceedings and it was legally competent for the Court to have made the order. The Court furthermore confirmed earlier authorities that such judgment was granted not on the basis that the applicants (defendants) did not have a defence, it was granted on the basis that the applicants (defendants) have been notified of the plaintiff's claim as required by the Rules, that the applicants (defendants), not having given notice of an intention to defend, are not defending the matter and that the plaintiff is in terms of the Rules of Court entitled to the order sought and granted. The service of process was effected by Assistant Deputy Sheriff by affixing copy of process on the main front gate of the *domicilium citandi et executandi* chosen by applicants – Court finding that that constitutes proper service in terms of rule 4 (1) (a) of the Rules of Court.

[34] In the matter of *MLN Extreme Safety Wear CC v Rockstar Footwear (Pty) Ltd* the defendant did not enter an appearance to defend after summons. The service of summons was effected by affixing it on the principal door at the *domicilium citandi* that was chosen by applicant himself. Applicant however, contended that summons were served at a place which he had left three months prior to the service of summons. He, therefore, did not have knowledge of it. The Court held that the correct legal position is that it is proper service if it is effected at the previous *domicilium citandi* even where change in *domicilium* was not brought to the plaintiff's attention.

[35] In the present matter the Deputy Sherriff simply states that he served the combined summons by leaving them at the *domicilium* chosen by the defendant. He

does not tell the Court how he left the summons there, was the place inaccessible or was the place abandoned or were there people and the people who were there did not want to accept service?

[36] I am of the further view that the matters of *Amcoal Collieries Ltd v Truter, Naftalie Nathanael Gaoseb and Another v Standard Bank of Namibia Limited and 5 Others* and *MLN Extreme Safety Wear CC v Rockstar Footwear (Pty) Ltd* do not lay down the principle that irrespective of the circumstances of a given case as long as service has been effected on a *domicilium* it is good service. In my view the facts of each case must be considered before reaching the conclusion that service by simply leaving court process at *domicilium* is good service or is service in accordance with the rules of Court.

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

The service of the summons was not in accordance with the rules of Court and the matter is removed from the roll.

Ueitele
Judge

APPEARANCES

PLAINTIFF: Ngakumbirue Katjivena
Of Katjaerua Legal Practitioners. Windhoek

DEFENDANT: No appearance