



“ANNEXURE 11”
IN THE HIGH COURT OF NAMIBIA

<p>Case Title: KUISEB FISHING ENTERPRISES (PTY) LTD PLAINTIFF</p> <p>v</p> <p>MANUEL AWASEB 1st DEFENDANT MOMENTUM FUNDS AT WORK 2nd DEFENDANT MARLISA VAN ZYL 3rd DEFENDANT MOMENTUM LIFE ASSURANCE NAMIBIA LIMITED 4th DEFENDANT</p>	<p>Case No: HC-MD-CIV-ACT-OTH-2019/01473</p> <p>Division of Court: High Court, Main Division</p>
<p>Heard before: Honourable Mr Justice Oosthuizen</p>	<p>Date of hearing: 7 - 11 June 2021 10 - 12 August 2021 10 September 2021</p> <p>Delivered on: 11 March 2022</p>
<p>Neutral citation: <i>Kuiseb Fishing Enterprises (Pty) Ltd vs Awaseb</i> (HC-MD-CIV-ACT-OTH-2019/01473) [2022] NAHCMD 102 (11 March 2022)</p>	

Result on merits: The plaintiff's claim fails.

Court Order

1. The Plaintiff's claim is dismissed with costs.
2. The matter is finalised and removed from the roll.

Reasons for orders:

[1] Plaintiff is Kuiseb Fishing Enterprises (Pty) Ltd, a Namibian registered company with its principal place of business in Walvis Bay.

[2] First Defendant is Manuel Awaseb, a major male and former employee of Plaintiff, employed as an accounting officer, with one of Plaintiff's subsidiaries under his accounting responsibilities.

[3] The second to fourth Defendants were cited as being involved in the pension benefits of the First Defendant and due thereto that Plaintiff, if successful in its remaining claim of damages based on the employment contract, claims for a forfeiture of the First Defendant's benefits under pension number DJ1-3138100 to satisfy its claim.

[4] Plaintiff's main claim was not successful so far due to thereto that at the end of Plaintiff's case the Court has absolved the First Defendant in the instance.

[5] Plaintiff's alternative claim is based on an alleged breach of contract, for damages in the amount of N\$ 104,848.15, remained. First Defendant and one witness testified.

[6] In short Plaintiff alleges that the First Defendant failed to perform his duties diligently and with due care; failed to act in the best interest of Plaintiff; failed to comply with Plaintiff's procurement policies and failed to act in good faith, and consequently caused the damages in [5] to Plaintiff.

[7] Plaintiff called two witnesses. Ms Thompson was the accountant of the Plaintiff from 2008 to January 2017. She was the financial manager of Plaintiff and supervisor of First Defendant.

[8] Concerning Plaintiff's damages, she testified about the procurement policies of Plaintiff and the process of authorising payments to suppliers. A request for payment would originate with First Defendant, be submitted to the manager of the subsidiary and if the manager is satisfied it would be submitted to the General Manager for final approval. Due to alleged deficits in the petty cash of the subsidiary company she was tasked to investigate.

[9] The witness found a loss (the claimed amount) and concluded that it was caused by First Defendant.

[10] The witness testified that her computation was not meant to be final. Further investigations needed to be done to determine the actual final loss. She testified that the final and actual loss can be computed going back to the pastel system of the subsidiary, Kuiseb Marine Farming. She however is not employed by the Plaintiff anymore and does not have access to the Plaintiff's or its subsidiaries books of account.

[11] The General Manager of the Plaintiff also testified. He did not quantify the losses to the company. He was also presented with another figure concerning the damages by the manager of the subsidiary (Mr Snyder) during January 2017, to wit N\$ 88, 348.54. Mr Snyder according to the evidence was however also not the final authority on the missing funds. The General Manager requested Ms Thompson, the first witness, to do further investigation but do not know whether she did it.

[12] She, according to her evidence, left the employment of the Plaintiff in the same month that Mr Snyder reported to the General Manager.

[13] It is common cause that the damages claimed was not derived from an annual financial statement of either the Plaintiff or its subsidiary. Such evidence was not

tendered in evidence.

[14] The damages, on the evidence, was derived from the initial report of Ms Thompson which was not final, not meant to be final, and not audited.

[15] Consequently, the figure in the initial report was not properly verified with reliable source documentation.¹

[16] Even if the Court would find that the losses was incurred due to First Defendant breaching his employment duties the evidence tendered concerning the damages would not place the court in a position to make a proper finding. The evidence of the First Defendant and his witness made no contribution to the quantification of damages.

[17] In the premises the Court finds that the Plaintiff did not prove its alleged damages on a preponderance of probabilities.

[18] Consequently, the following orders are made:

[18.1] Plaintiff's Claim is dismissed with costs.

[18.2] The matter is finalised and removed from the roll.

Judge's signature:	Note to the parties:
Counsel:	
Plaintiff(s)	Defendant (s)
G Kasper Murorua, Kurtz & Kasper Legal Practitioners Windhoek, Namibia	R Silungwe Silungwe Legal Practitioners Windhoek, Namibia

¹ *Eyambeko Construction CC v FP du Toit Group* (HC-MD-CIV-ACT-DEL-2018/01104) [2020] NAHCMD 220 (26 May 2020).