

“RULING”

IN THE HIGH COURT OF NAMIBIA

<b>Case Title:</b> MOOPI UHONGORA // ELSE UHONGORA	<b>Case No:</b> HC-MD-CIV-ACT-OTH-2018/01448
	<b>Division of Court:</b> High Court, Main Division
<b>Heard before:</b> Honourable Justice Herman Oosthuizen	<b>Date of Hearing:</b> 22 October 2021
	<b>Delivered on:</b> 14 January 2022
<b>Neutral Citation:</b> <i>Uhongora v Uhongora</i> (HC-MD-CIV-ACT-OTH-2018/01448) [2022] NAHCMD 4 (14 January 2022).	
<b>Result on merits:</b> Pleadings are re-opened.	
<b>The Order:</b>  Having heard <b>MR TJINGAIRI KAURIVI</b> , on behalf of the Plaintiff/Respondent and <b>MS RACHEL MONDO</b> , on behalf of the Defendant/Applicant —  <b>IT IS ORDERED THAT:</b>  1. Pleadings are re-opened.  2. Defendant is granted leave to amend her plea as per annexure “A” to her founding affidavit of 6 August 2021.  3. Defendant is granted leave to file a counterclaim as per annexure “B” to her founding affidavit of 6 August 2021.  4. Defendant is granted leave to amend her pre-trial report to include the issues raised in annexures “A” and “B” to her founding affidavit.  5. Defendant shall bear the costs occasioned by the aforesaid amendments.  6. Annexures “A” and “B” shall be filed in their proper form on or before	

**31 January 2022.**

7. Plaintiff shall replicate to defendant's amended plea on or before **18 February 2022.**

8. Plaintiff shall plead to the defendant's counterclaim on or before **18 February 2022.**

9. Defendant shall replicate to the plea of the plaintiff to the counterclaim on or before **25 February 2022.**

10. The parties shall file further discoveries on or before **25 February 2022.**

11. The parties shall file a case management report on or before **4 March 2022.**

12. A case management conference shall be held on **7 March 2022** at **15h00**, SADC Court.

**Reasons for Orders:**

[1] Plaintiff allegedly bought Farm Geduld No. 698 in the Omaheke Region and measuring 4860, 8870 hectares from his elderly father on 14 April 2015.

[2] His father passed away on 5 September 2015.

[3] Defendant lived on the subject farm since early childhood.

[4] Defendant says she has no formal education and cannot speak English. She also says that her late father could not read or speak English.

[5] According to defendant the portion of the subject farm she occupies was given to her by her late father during 1995.

[6] Plaintiff instituted eviction proceedings against defendant during 2018. Defendant defended and pleaded that she acquired a lifelong usufruct from her late father.

[7] The matter proceeded through case management and was already on the roll for hearing on two different occasions.

[8] Defendant has acquired legal aid and the present legal practitioner is the third appointed by Legal Aid.

[9] Defendant applied for the re-opening of the pleadings; leave to amend her plea; leave to file a counterclaim and leave to amend the pre-trial report and consequent order.

[10] Plaintiff strenuously opposes this application.

[11] At all relevant times when the defendant in person appeared before Court she was assisted by one or both of her sons.

[12] As managing judge I was not at all pleased with the progress of the case and wanted it to be finalised according to the pleadings and the pre-trial.

[13] Defendant however is entitled to a fair hearing of her case according to her version.

[14] She says that her previous representatives did not fully appreciate and mirrored her instructions in her pleadings and the pre-trial report, hence her application for amendments.

[15] Defendant take issue with the correctness of the legal advice she received earlier from her first representative which impacted on her second representative which had to work with set pleadings shortly before the trial and withdrew after consultation with defendant on the basis of conflicting instructions.

[16] Despite the apparent prejudice to the plaintiff it is in the interest of justice that the trial shall eventually take place on the intended versions of the respective litigants.

[17] Having considered the explanations of both the defendant and the plaintiff there are issues which favour the granting of amendments, such as defendant's (and her late father's) lack of comprehension of the English language and the absence of the deed of sale.

[18] Defendant requests indulgences from the Court to effect amendments applied for. I see no reason why Rule 52(8) should not apply. Until now the Court was never favoured by the defendant with a detailed exposition of her financial position. The fact that she receive legal aid does not shield her from adverse cost orders. It shield only the State and the Directorate of Legal Aid.

[19] In the result the following orders are made:

[19.1] Pleadings are re-opened.

[19.2] Defendant is granted leave to amend her plea as per annexure "A" to her founding affidavit of 6 August 2021.

[19.3] Defendant is granted leave to file a counterclaim as per annexure "B" to her founding affidavit of 6 August 2021.

[19.4] Defendant is granted leave to amend her pre-trial report to include the issues raised in annexures "A" and "B" to her founding affidavit.

[19.5] Defendant shall bear the costs occasioned by the aforesaid amendments.

[19.6] Annexures "A" and "B" shall be filed in their proper form on or before **31 January 2022**.

[19.7] Plaintiff shall replicate to defendant's amended plea on or before **18 February 2022**.

[19.8] Plaintiff shall plead to the defendant's counterclaim on or before **18 February 2022**.

[19.9] Defendant shall replicate to the plea of the plaintiff to the counterclaim on or before **25 February 2022**.

[19.10] The parties shall file further discoveries on or before **25 February 2022**.

[19.11] The parties shall file a case management report on or before **4 March 2022**.

[19.12] A case management conference shall be held on **7 March 2022** at **15h00**, SADC Court.

<b>Judge's signature:</b>	<b>Note to the parties:</b>
<b>Counsel:</b>	
<b>Plaintiffs</b>	<b>Defendants</b>
Mr Tjingairi Kaurivi Of TK Kaurivi Legal Practitioners	Ms Rachel Mondo Of Nixon Marcus Public Law Office