

Results on merits:

Merits not considered.

The order:

1. The plaintiffs are granted leave to amend their particulars of claim dated 14 December 2021 as set out in the notice of intention to amend dated 1 July 2022, which amendment should be effected by 13 October 2022.
2. The costs occasioned by the objection to the amendment stands over to be decided later.
3. The matter is postponed to **3 November 2022 at 15h30** for a status hearing and or further case planning conference hearing.
4. The parties shall file a joint status report on or before 1 November 2022.

Reasons for orders:

COLEMAN J:

Introduction

[1] This is an opposed application for leave to amend the plaintiffs' particulars of claim. The plaintiffs pursued an application for summary judgment and the first and second defendants (defendants) raised the excipiability of the particulars of claim as a defence. As a result, the plaintiffs gave notice of intention to amend their particulars of claim on 1 July 2022. In response,

the defendants filed a notice of objection on 15 July 2022.

[2] In essence, the defendants contend that the particulars of claim does not disclose a cause of action since the money claimed and interest had already been paid. This looks like a matter for pleading. Consequently, I am not going to deal with it as an objection to a proposed amendment. The opportunity still remains for defendants to raise exceptions in terms of the appropriate rule.

[3] Furthermore, the defendants object to the amendment on the ground that the particulars of claim is vague and embarrassing for a variety of reasons. I also do not see this as an objection to a proposed amendment.

[4] Admittedly, the plaintiffs' particulars of claim is convoluted. The plaintiffs are trustees representing a Trust. They allege that a settlement agreement was entered into between the Trust and first defendant in terms whereof the latter acknowledged liability of N\$1 580 156,33 to the Trust. In addition, the first defendant undertook to return the performance guarantee provided by the Trust to the Trust no later than 31 October 2016. Some other terms were agreed to that are not material here. On the basis of this, the Trust obtained a court order on 5 October 2017 ordering the defendants for payment of N\$963 402,97 and N\$607 463,68. The order also directs the first defendant to return the performance guarantee to the plaintiffs.

[5] The plaintiffs' case is that the payments ordered to be paid had been settled. They base their case now on the fact that the first defendant did not return the performance guarantee as it was ordered. They claim N\$2 490 631,39 as interest on the performance agreement amount. This claim appears questionable. The performance guarantee is limited to N\$2 049 270,46. It is not clear how the amount claimed is arrived at and why there is a liability. However, I am not going to address the merits of this on an application for amendment.

[6] The plaintiffs want to amend their particulars of claim by inserting a para numbered 22 as well as paras 26 to 28 and alternative claims. This amendment is fraught with unclarity, but I

make no ruling on its excipiability. In my view, it is something to be decided when a proper exception dealing with the complete pleadings is taken. Counsel for the defendants indicated that they intend taking a comprehensive exception in due course. Consequently, with some trepidation, I allow the amendment.

[17] Accordingly, I make the following order:

1. The plaintiffs are granted leave to amend their particulars of claim dated 14 December 2021 as set out in the notice of intention to amend dated 1 July 2022, which amendment should be effected by 13 October 2022.
2. The costs occasioned by the objection to the amendment stands over to be decided later.
3. The matter is postponed to **3 November 2022 at 15h30** for a status hearing and or further case planning conference hearing.
4. The parties shall file a joint status report on or before 1 November 2022.

Judge's signature	Note to the parties:
	Not applicable.
Counsel:	
Plaintiff	First and Second defendant

<p>M U Kuzeeko Of Dr Weder Kauta Hoveka Windhoek</p>	<p>R Silungwe Of Silungwe Legal Practitioners Windhoek</p>
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