

REPUBLIC OF NAMIBIA



HIGH COURT OF NAMIBIA MAIN DIVISION, WINDHOEK

Practice Directive 61

Case Title: CHRISTOPHINA NAMATANGA SHILAMBA VICTOR KWENANI HILDE NDESHIHAFELA SHILAMBA ALBERTINA MWADHINA ABIATAR and CHIDINO CHA LUCHINDO (PTY) LTD DEFENDANT NDAAMBELELA MAGANO GIFT KAFULA DEFENDANT BONIFATIUS AMUTSE DEFENDANT JERRY SHITENGA DEFENDANT EUSTACE MUKWENDA PUTEHO DEFENDANT EFRAIM PUTEHO DEFENDANT CECILIA PUTEHO DEFENDANT	Case No: HC-MD-CIV-ACT-OTH-2022/01230 Division of Court: HIGH COURT(MAIN DIVISION) 2 ND PLAINTIFF 3 RD PLAINTIFF 4 TH PLAINTIFF 1 ST 2 ND 3 RD 4 TH 5 TH 6 TH 7 TH
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Heard before: HONOURABLE JUSTICE COLEMAN	Date of Hearing: 28 OCTOBER 2022
	Date of Order: 10 NOVEMBER 2022
Neutral citation: <i>Shilamba v Chidino Cha Luchindo</i> (Pty) Ltd (HC-MD-CIV-ACT-OTH-2022/01230) [2022] NAHCMD 611 (10 November 2022)	
Results on merits: Merits not considered.	
The Order	
<ol style="list-style-type: none"> 1. The application for summary judgment is dismissed. 2. The plaintiffs are to pay defendants' costs jointly and severally, the one paying the other to be absolved, subject to rule 32(11). 3. The matter is postponed to 26 January 2023 at 15h30 for a further case planning 	

conference hearing.

Reasons for Orders:

COLEMAN J:

Introduction

[1] This is an application for summary judgment by shareholders of a company (first defendant) against the second to seventh defendants for payments allegedly received by them from the company.

Defences

[2] The defendants resist the application and raise a variety of defences as well as counterclaims. Second defendant essentially alleges that the payments were authorised by the company. Third defendant denies that he received any money from the company. Fourth defendant also denies he received any money from the company. Fifth defendant alleges that he received a legitimate dividend payment from the company. Sixth Defendant alleges he received payments from fifth defendant and he understood it constituted dividend payments from first defendant. Seventh defendant alleges essentially the same.

[3] Some of the defendants allege they have counterclaims for the rectification of the shareholders' register of the first defendant.

Conclusion

[4] The defences outlined involve a dispute of fact which should not be resolved in summary judgment proceedings. The defences also cannot be said to be not *bona fide*. It also appears that the counterclaims may have a bearing on the merits of some of the claims which are the subjects of the summary judgment application. As a consequence I do not see it appropriate to grant summary judgment herein.

[5] I make the following order:

1. The application for summary judgment is dismissed.

2. The plaintiffs are to pay defendants' costs jointly and severally, the one paying the other to be absolved, subject to rule 32(11).

3. The matter is postponed to 26 January 2023 at 15h30 for a further case planning conference hearing.

Judge's signature	Note to the parties:
COLEMAN Judge	Not applicable.
Counsel:	

Plaintiffs	Defendants
Ms Brinkman Of LorentzAngula Inc., Windhoek	Ms Rieth Instructed by Metcalfe Beukes Attorneys, Windhoek