REPUBLIC OF NAMIBIA

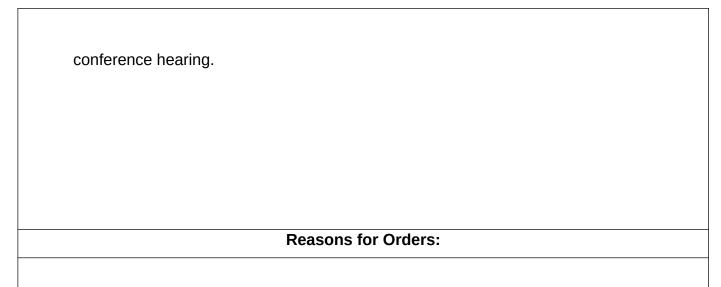


HIGH COURT OF NAMIBIA MAIN DIVISION, WINDHOEK

Practice Directive 61

Case Title:		Case No:
CHRISTOPHINA NAMATANGA		HC-MD-CIV-ACT-OTH-2022/01230
SHILAMBA		Division of Court:
VICTOR KWENANI	2 ND PLAINTIFF	HIGH COURT(MAIN DIVISION)
HILDE NDESHIHAFELA SHILAMBA	3RD PLAINTIFF	
ALBERTINA MWADHINA ABIATAR	4 [™] PLAINTIFF	
and		
CHIDINO CHA LUCHINDO (PTY)	LTD 1 ST	
DEFENDANT		
NDAAMBELELA MAGANO		
GIFT KAFULA	2 ND	
DEFENDANT		
BONIFATIUS AMUTSE	3 RD	
DEFENDANT		
JERRY SHITENGA	4 TH	
DEFENDANT		
EUSTACE MUKWENDA PUTEHO	5 [™]	
DEFENDANT		
EFRAIM PUTEHO	6 TH	
DEFENDANT		
CECILIA PUTEHO	7 [™]	
DEFENDANT		

Heard before:	Date of Hearing:	
HONOURABLE JUSTICE COLEMAN	28 OCTOBER 2022	
	Date of Order:	
	10 NOVEMBER 2022	
Neutral citation: Shilamba v Chidino Cha Luchindo (Pty) Ltd (HC-MD-CIV-ACT-OTH-2022/01230) [2022] NAHCMD 611 (10 November 2022)		
Results on merits: Merits not considered.		
The Order		
1. The application for summary judgment is dismisse	ed.	
2. The plaintiffs are to pay defendants' costs jointly a to be absolved, subject to rule 32(11).	and severally, the one paying the other	
3. The matter is postponed to 26 January 2023 a	at 15h30 for a further case planning	



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

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[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 <i>bona fide</i> . 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.
 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	Not applicable.	
Judge		
Counsel:		

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