

REPUBLIC OF NAMIBIA



HIGH COURT OF NAMIBIA MAIN DIVISION, WINDHOEK

JUDGMENT

In the matter between:

Case no: HC-MD-CIV-ACT-DEL-2020/01099

**STEFAN GOIKE**

**PLAINTIFF**

and

**NATASCHA GESCHE VON ZELEWSKI**

**DEFENDANT**

**Neutral citation:** *Goike v Von Zelewski* (HC-MD-CIV-ACT-DEL-2020/01099)  
[2022] NAHCMD 637 (22 November 2022)

**Coram:** MILLER AJ

**Heard:** 14 September 2022

**Delivered:** 22 November 2022

**Flynote:** Law of property – Ownership – Claim for ownership by accession – Such manifests when the object or a part thereof (accessory) incorporated by natural or artificial means into another (principal) thing – Plaintiff unable to [rove ownership or bona fide possessor – Claim is dismissed with costs.

**Summary:** Plaintiff's claim is founded in law of accession. Defendant removed permanent fixtures from immovable property. Plaintiff purchased property after the

fact and claim for return of items removed. Plaintiff unable to prove ownership or bona fide possessor. Claim is dismissed with costs.

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### ORDER

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

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### JUDGMENT

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[1] The plaintiff instituted action against the defendant for payment in the sum of N\$80,190.04 together with interest and costs.

[2] The claim has its foundation in the law of accession. It is alleged that in a rather roundabout way, the defendant had removed certain items from a residential unit she had occupied previously, before she was evicted from the property. The allegations appear to be that the items she had removed were 'permanent fixtures' in the immovable property. The items so removed are the following:

- 2.1 A Camino fire place with glass and speckstein;
- 2.2 1 x Gas fireplace;
- 2.3 1 x Barracuda for pool and swimming pool cover;
- 2.4 A remote control for the air-conditioning units and
- 2.5 1 x office safe.

[3] I pause to state at the outset that, it cannot be said that the pool cover and the remote controls can be classified as objects which had been attached to the immovable property, consequently losing their identity and becoming part of the immovable property as such.

[4] I will consequently only consider whether any case has been made out in respect of the remainder of the items.

[5] “Ownership is acquired by accession when the object or a part thereof (accessory) incorporated by natural or artificial means into another (principal) thing. By accession ownership of the accessory is lost and the owner of the principal thing becomes the owner of the entity resulting from the incorporation or joining”. Wille’s *Principles of South Africa Law* 9<sup>th</sup> edition at page 493.

[6] It follows that in those circumstances the owner of the principal thing has a claim against another party who removes the accessory. It may conceivably be argued that a bona fide possessor likewise has a claim. It is however not necessary to determine the issue.

[7] On the facts of the case before me the plaintiff were neither the owner nor a bona fide possessor of the residential unit. On his own evidence he was no more than a prospective purchaser when he viewed the property at the relevant time with the aim of purchasing it. When eventually he became the owner, the items complained of had been removed.

[8] It follows that the plaintiff failed to establish the fundamental basis for his claim against the defendant.

[9] In so far as it may be necessary, I find that the plaintiff’s case falters on a different aspect. There is no reliable evidence of the value of the items allegedly removed. The onus remained on the plaintiff even assuming that he has acquired any rights, to prove damages. The onus cannot be discharged by merely handing in estimates and quotations. What needs to be alleged and proved is the difference in the value of the property with the attachments and the value without the attachments.

[10] I therefore make the following order:

1. The claim is dismissed with costs.

2. The matter is finalised and removed from the roll.

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K MILLER  
Judge

## APPEARANCES

PLAINTIFF:

J NEVES

Neves Legal Practitioners, Windhoek

DEFENDANT:

T NANHAPO

Brockhoff & Associates legal practitioners,  
Windhoek