

REPUBLIC OF NAMIBIA

HIGH COURT OF NAMIBIA



MAIN DIVISION, WINDHOEK

RULING

PRACTICE DIRECTION 61

Case Title: R K INVESTMENT CC & ANOTHER // UNION TILES WINDHOEK (PTY) LTD & ANOTHER	Case No: HC-MD-CIV-ACT-CON-2019/04266
	Division of Court: HIGH COURT (MAIN DIVISION)
Heard before: PARKER, AJ	Date Determined: 5 JUNE 2023
	Delivered on: 13 JUNE 2023
Neutral citation: R K Investment CC v Union Tiles Windhoek (Pty) Ltd (HC-MD-CIV-ACT-CON-2019/04266) [2023] NAHCMD 318 (13 June 2023)	
Order:	
<ol style="list-style-type: none">1. The plaintiff shall file its interlocutory application on or before 19 June 2023.2. The defendant shall file its answering affidavit on or before 28 June 2023.3. The plaintiff shall file its replying affidavit, if any, on or before 10 July 2023.4. The parties shall file their heads of argument in terms of the rules.5. The matter is postponed to 8 August 2023 for interlocutory hearing.6. The plaintiff and/or the defendant is authorised to serve this ruling on the third party.	
Reasons for the above order:	
<p>[1] In this matter, Mr Bangamwabo represents the plaintiff, Mr Mouton represents the</p>	

defendant, and Mr Barnard represents the third party. The case involves a contractual claim of the plaintiff against the defendant. In the course of events, upon an application by the defendant and an order of the court, the third party was joined as a party to the action. An application filed by the third party to rescind that court order has been set down to be heard on 22 June 2023 before Sibeya J.

[2] Mr Bangamwabo urged the court to proceed with the trial of the action between the plaintiff and the defendant as set down. Mr Barnard on his part submitted that the third party did not seek the proceedings to be postponed, that is, the proceedings of the trial of the original action. I drew counsel's attention to the Pre-trial Order wherein the third party reserved its right to challenge the evidence of the plaintiff and the defendant during the trial of the original action. Mr Barnard responded that he would not do so. In that regard, when Mr Barnard asked to be excused from the trial of the original action, I acceded to his entreaty because the trial of the original action did not concern the third party: It related to a contract of sale of goods between the plaintiff and the defendant.

[3] But I am aware that if a third party is joined in an action, it was as though an action between the defendant and the third party was, for convenience, to be tried together with that between the plaintiff and the defendant. Howsoever that may be, in the circumstances of the instant matter, alluded to previously, that cannot be done in the instant proceedings as those proceedings concern the trial of the original action.

[4] I do not read rule 50 of the rules of court to preclude the court from doing that which the parties could do in terms of rule 50(11). The date of delivery of a ruling on the rescission application before Sibeya J is uncertain in the future. In that regard, it was the court's view that it answered to real and substantial justice that the trial of the original action between the plaintiff and the defendant should proceed unstopped, while the defendant and the third party waited for the outcome of Sibeya J's determination of the rescission application, for such determination has a direct bearing on the action between the defendant and the third party, and not the original action.

[5] Before the trial of the original action between the plaintiff and the defendant, Mr Bangamwabo informed the court that the plaintiff was bringing an interlocutory application. In that event, the action between the third party and the defendant can be tried under the present case number assigned to the original action. Therefore, the trial of the original action

is not rendered finalised in such a way as to make it necessary for the defendant to start a fresh action against the third party under a separate or another case number.¹ This court will hear the defendant's claim for contribution or indemnity against the third party in the instant matter under the present case number, as aforesaid, after conclusion of the original action.

[6] The order made hereunder is about the conduct of the original action; and for the foregoing reasons, it is required and necessary that all orders made be served on the third party, because, as I have said previously, the trial of the action between the plaintiff and the defendant is to be tried together with that between the defendant and the third party.

[7] In the result, I order as follows:

1. The plaintiff shall file its interlocutory application on or before 19 June 2023.
2. The defendant shall file its answering affidavit on or before 28 June 2023.
3. The plaintiff shall file its replying affidavit, if any, on or before 10 July 2023.
4. The parties shall file their heads of argument in terms of the rules.
5. The matter is postponed to 8 August 2023 for interlocutory hearing.
6. The plaintiff and/or the defendant is authorised to serve this ruling on the third party.

Judge's signature:	Note to the parties:
	Not applicable.
Counsel:	
Plaintiff	Defendant
F BANGAMWABO of FB Law Chambers, Windhoek	C MOUTON Instructed by Neves Legal Practitioners, Windhoek

¹ See *Stott v West Yorkshire Road Car Co Ltd* [1971] 2 QB 651.

	Third Party
	P BARNARD Instructed by Dr Weder, Kauta & Hoveka Inc., Windhoek