

REPUBLIC OF NAMIBIA

HIGH COURT OF NAMIBIA



MAIN DIVISION, WINDHOEK

RULING

PRACTICE DIRECTION 61

<b>Case Title:</b> LONGINUS IIDHOGELE // FIRST NATIONAL BANK UNIT TRUST	<b>Case No:</b> HC-MD-CIV-ACT-OTH-2022/03019
	<b>Division of Court:</b> HIGH COURT (MAIN DIVISION)
<b>Heard before:</b> PARKER, AJ	<b>Date reserved:</b> 13 June 2023
	<b>Delivered on:</b> 28 June 2023
<b>Neutral citation:</b> <i>lidhogela v First National Bank Unit Trust</i> (HC-MD-CIV-ACT-OTH-2022/03019) [2023] NAHCMD 363 (28 June 2023)	
<b>Order:</b>	
<ol style="list-style-type: none"><li>1. The exception of the particulars of claim is upheld with costs, capped in terms of rule 32(11) of the rules of court.</li><li>2. The plaintiff shall file amended pleadings on or before 18 July 2023.</li><li>3. The defendant shall, if it so wishes, file any objection to the amended pleadings on or before 2 August 2023.</li><li>4. The parties and/or their legal practitioners are called upon to attend a status hearing on 9 August 2023 at 08h30 for the court to determine the further conduct of the matter.</li></ol>	
<b>Reasons for the above order:</b>	
[1] As to the background of the instant matter, it serves no real purpose to garnish this ruling with copious rehearsal of the facts which are sufficiently set out in the written heads of	

argument of Ms Karamata (and Ms Katjaerua), counsel for the defendant.

[2] The defendant has sought to except the plaintiff's particulars of claim on the ground that the plaintiff's claim does not disclose a cause of action and/or lacks the averments necessary to sustain a cause of action. The plaintiff represents himself; and he opposes the application.

[3] Relying on authority,<sup>1</sup> the Supreme Court held that -

'A cause of action ordinarily means every fact which it would be necessary for the plaintiff to prove, if traversed, in order to support his (or her) right to judgment of the court'.<sup>2</sup>

[4] Since the plaintiff is a lay litigant, I should remind myself of the counsel by, the Supreme Court that –

'[17] It follows from what has just been said that the appellant has not complied with the rules of the court that regulate the prosecution of appeals in material respects. In reaching this conclusion, it has been borne in mind that appellant is a layperson who represents himself before the court. The appellant implored the court to overlook his procedural non-compliance and determine the substantive issues that he asserts underlie the appeals, namely, the satisfaction of the judgments of the district labour court mentioned above. However, we cannot overlook the rules which are designed to control the procedures of the court. Although a court should be understanding of the difficulties that lay litigants experience and seek to assist them where possible, a court may not forget that court rules are adopted in order to ensure the fair and expeditious resolution of disputes in the interest of all litigants and the administration of justice generally. Accordingly, a court may not condone non-compliance with the rules even by lay litigants where non-compliance with the rules would render the proceedings unfair or unduly prolonged.'<sup>3</sup>

[5] Furthermore, the Supreme Court tells us that pleadings prepared by lay persons representing themselves ought to be construed generously and in the light most favourable to such litigant. In that regard it is the substance of their pleadings and not the form in which the pleadings have been formulated that ought to be considered.<sup>4</sup> But as I said in *Heita v The*

<sup>1</sup> *Director of Hospital Services v Mistry* 1979 (1) SA 626 (A).

<sup>2</sup> *Mwadinomho Martha Kristian Nelumbu and Others v Georges P.S. Hikumwah* SA 27/2015 (SC) para 40.

<sup>3</sup> *Worku v Equity Aviation Services (Namibia) (Pty) Ltd (In Liquidation) and Others* 2014 (NR) 234 (SC).

<sup>4</sup> *Christian v Metropolitan Life Namibia Retirement Annuity Fund and Others* 2008 (2) NR 753 (SC) para 8.

*Minister of Safety and Security*, the Supreme Court proposition should not be taken too far as to cover situations where a rule of court has not been complied with.<sup>5</sup>

[6] Damaseb JP hit the nail on the head when he stated succinctly and categorically:

‘What we want to stress is that lay litigants are just as much under an obligation as those represented by lawyers to follow the rules of court, and cannot, as they please, (fail to) comply with rules of court.’<sup>6</sup>

[7] In the instant matter, I have pored over the pleadings of the plaintiff. Having done that and having construed generously the pleadings in the light most favourably to the plaintiff and having considered the substance and not the form in which the pleadings have been formulated,<sup>7</sup> I find that the plaintiff failed to comply with rule 7(8), he has not set out a cause of action, that is, a fact or facts which would be necessary for the plaintiff to prove, if traversed, to support his right to the judgment of the court.<sup>8</sup>

[8] Based on these reasons, I conclude that the defendant has made out a case for the relief sought. In the result, I order as follows:

1. The exception of the particulars of claim is upheld with costs, capped in terms of rule 32(11) of the rules of court.
2. The plaintiff shall file amended pleadings on or before 18 July 2023.
3. The defendant shall, if it so wishes, file any objection to the amended pleadings on or before 2 August 2023.
4. The parties and/or their legal practitioners are called upon to attend a status hearing on 9 August 2023 at 08h30 for the court to determine the further conduct of the matter.

**Judge’s signature:**

**Note to the parties:**

<sup>5</sup> *Heita v The Minister of Safety and Security* [2013] NAHCMD 330 (8 November 2013) para 4.

<sup>6</sup> *Kalenga Iyambo v S* Case No. CA 165/2008 para 10.

<sup>7</sup> See para 4 above.

<sup>8</sup> *Read v Brown* 22 QBD 128 at 131, approved by the Supreme Court in *Mwadinomho Martha Kristian Nelumbu* footnote 2 and applied by the court in *Shilumbu v Standard Bank Namibia Limited* [2022] NAHCMD 561 (18 October 2022).

	Not applicable.
<b>Counsel:</b>	
<b>Plaintiff</b>	<b>Defendant</b>
In Person	P Karamata of Katjaerua Incorporated, Windhoek