

REPUBLIC OF NAMIBIA

HIGH COURT OF NAMIBIA



MAIN DIVISION, WINDHOEK

RULING

PRACTICE DIRECTION 61

Case Title: BANK WINDHOEK LIMITED // GRETCHEN MERCY NDINELAO NICODEMUS	Case No: HC-MD-CIV-ACT-CON-2022/02547
	Division of Court: HIGH COURT (MAIN DIVISION)
Heard before: PARKER, AJ	Heard on: 21 June 2023
	Delivered on: 5 July 2023
Neutral citation: <i>Bank Windhoek Limited v Nicodemus</i> (HC-MD-CIV-ACT-CON-2022/02547) [2023] NAHCMD 376 (5 July 2023)	
Order:	
<ol style="list-style-type: none">Summary judgment is granted with costs in favour of the plaintiff in respect of Claim 1, Claim 2 and Claim 3 of the particulars of claim.The matter is finalised and removed from the roll.	
Reasons for the above order:	
<p>[1] The plaintiff, represented by Ms Venter, applied for an order for summary judgment. The defendant, who has had legal representation at all relevant time, has been aware of the summary judgment application since 24 April 2023 and the set down date for the hearing of the application since 10 May 2023. The relief sought is set out amply in the particulars of claim.</p> <p>[2] On the hearing date, there was no appearance by the defendant in person or by</p>	

counsel. On these facts, I asked Ms Venter to move the application and address the court. I am grateful to counsel for her comprehensive heads of argument.

[3] The purpose of an order in terms of rule 60 of the rules of court is to enable a plaintiff to obtain a summary judgment swiftly without trial, if the plaintiff has a clear case and if the defendant is unable to set up a bona fide defence, which is good in law or raise an issue against the claim which ought to be tried.¹

[4] It follows inexorably that in order to resist a summary judgment order, the defendant bears the onus of satisfying the court that he or she has set up a bona fide defence which is good in law or that he or she has raised an issue which ought to be tried. To establish these requisites, the defendant must fully disclose the nature and grounds of the defence and the material facts upon which that defence is founded, in the sense that there 'need to be' factual material placed before the court sufficiently placing in doubt that the plaintiff's claim is unanswerable.²

[5] In the instant proceeding, the defendant has not placed any factual material before the court to establish that he has a bona fide defence which is good in law; neither has he raised a triable issue and, thus, 'sufficiently placing in doubt that the plaintiff's claim is unanswerable'.³ In the same vein, the defendant has failed to satisfy the court that (a) the bonded property mentioned in the particulars of claim is his primary home, within the meaning of rule 108 (2)(c) of the rules of court, and (b) there are less drastic measures available to the plaintiff than sale in execution of the said property, as envisaged in rule 108(2)(c) of the rules of court.

[6] It appears to me that the delivery of notice to defend was done solely as a mere delaying tactic amounting to an abuse of the process of the court.⁴

[7] Based on these reasons, I conclude that the plaintiff has made out a case for the granting of summary judgment. In the result, I order as follows:

¹ *Namibia Wildlife Resorts Limited v Maxuilili-Ankama* [2023] NAHCMD 94 (7 March 2023); *First National Bank of Namibia v Yeung Tai Foodstuff & Trading CC* [2022] NAHCMD 143 (28 March 2022).

² *Radial Truss Industries (Pty) Ltd v Aquatan (Pty) Ltd* [2019] NASC (10 April 2019) para 37.

³ *Loc cit.*

⁴ See *First National Bank of Namibia v Yeung Tai Foodstuff & Trading CC* footnote 1 para 19.

1. Summary judgment is granted with costs in favour of the plaintiff in respect of Claim 1, Claim 2 and Claim 3 of the particulars of claim.
2. The matter is finalised and removed from the roll.

Judge's signature:	Note to the parties:
	Not applicable.
Counsel:	
Plaintiff	Defendant
S Venter of Dr Weder, Kauta & Hoveka Inc., Windhoek	No appearance