

REPUBLIC OF NAMIBIA

HIGH COURT OF NAMIBIA



MAIN DIVISION, WINDHOEK

RULING

PRACTICE DIRECTION 61

Case Title: LYDIA NALIMANGULEKE MAGANO KAZIUMBO // GERHARDUS MORGAN GAOSEB & ANOTHER	Case No: HC-MD-CIV-ACT-OTH-2022/04591
	Division of Court: HIGH COURT (MAIN DIVISION)
Heard before: HONOURABLE MR JUSTICE PARKER, ACTING	Date of hearing: 27 June 2023
	Delivered on: 17 July 2023
Neutral citation: <i>Kaziumbo v Gaoseb</i> (HC-MD-CIV-ACT-OTH-2022/04591) [2023] NAHCMD 404 (17 July 2023)	
Order: 1. There is no order as to costs. 2. The matter is finalised and removed from the roll.	
Reasons for the above order:	
PARKER AJ: [1] In October 2022, the plaintiff instituted proceedings to evict defendants from her property at Erf 3015 (portion of Erf 2989), Otjomuise, Extension 2, Windhoek. The second defendant filed a notice of her intention to defend the action and brought an application to stay the proceedings 'pending the defendants' intended rescission application at the Magistrate's Court. The lower court had granted an order to evict the defendants from the same property. Mr Lochner represents the plaintiff, and Mr Ikanga represents the second defendant.	

[2] Before the set down date for hearing the application to stay proceedings, the court was provided with a court order of the Magistrate's court that was in favour of the plaintiff. Meanwhile, the defendants (and other occupiers of the property) had vacated the property on 11 March 2023. The result was that as on 11 March 2023 the cause of action had dissipated. There was no cause of action for the court to adjudicate upon. The cause of action before the court under case no. HC-MD-CIV-ACT-OTH-2022/04591 that the court was approached to adjudicate upon was the allegedly unlawful occupation of the property by the defendants. It was not about ownership of the property *per se*. In our law, a lawful possessor of property can approach the court to evict an unlawful occupier of that property.

[3] As I have said previously, with the granting of the rescission application by the Magistrates court and the defendants having left the property, there was no cause of action before the court for the court to adjudicate upon.

[4] In our law, when it is said that costs follow the event, it means costs should follow the outcome of the matter in question. The word 'event' in that principle is translated from the Latin '*eventus*', which means outcome or result.

[5] The outcome of the instant action and any interlocutory applications arising therefrom is that the cause of action has dissipated, leaving the court with no cause of action to adjudicate upon. The plaintiff did not withdraw the action, and so rule 97 of the rules of court does not apply.

[6] Having applied the principle that costs follow the event, I conclude that real and substantial justice of the matter compels me to decide that no costs order ought to be made against any party. In the result, I order as follows:

1. There is no order as to costs.
2. The matter is finalised and removed from the roll.

Judge's signature:	Note to the parties:
	Not applicable.

Counsel:	
Plaintiff	Defendant
L Lochner Instructed by Etzold-Duvenhage, Windhoek	M Ikanga of M. Ikanga & Associates Inc., Windhoek