

REPUBLIC OF NAMIBIA

HIGH COURT OF NAMIBIA



MAIN DIVISION, WINDHOEK

RULING

PRACTICE DIRECTION 61

Case Title: NEDBANK NAMIBIA LIMITED // LILIAN EMMACULATE ATIENO MIJORO	Case No: HC-MD-CIV-ACT-CON-2022/04924
	Division of Court: HIGH COURT (MAIN DIVISION)
Heard before: HONOURABLE MR JUSTICE PARKER, ACTING	Date of hearing: 28 June 2023
	Delivered on: 17 July 2023
Neutral citation: <i>Nedbank Namibia Limited v Mijoro</i> (HC-MD-CIV-ACT-CON-2022/04924) [2023] NAHCMD 405 (17 July 2023)	
Order: <ol style="list-style-type: none">1. The amounts already paid by the defendant in terms of the Agreement filed of record are forfeited in favour of the plaintiff.2. The defendant must make payment in the amount of N\$467 357,29 plus interest thereon, at the rate of 18.80 per cent per annum calculated from 8 August 2022 to date of full and final payment.3. The defendant must pay the costs of suit on the scale as between attorney (legal practitioner) and client.4. The matter is finalised and is removed from the roll.	
Reasons for the above order:	
PARKER AJ:	

[1] In the instant action, the plaintiff applied for summary judgment in January 2023. The court ordered the defendant to file opposing papers on or before 20 March 2023. The defendant failed to comply with the court order and failed to appear in court for status hearing in respect of the matter.

[2] In the absence of the defendant, the court afforded the defendant another opportunity to file her opposing papers on or before 21 April 2023. The defendant failed a second time to comply with the order of the court. On 17 May 2023, the defendant failed to appear in court for status hearing. In her absence, the court extended another largesse to the defendant and ordered her to file her opposing papers on or before 31 May 2023. One more time, the defendant failed to comply with the court order.

[3] The train of justice cannot wait for an indeterminate time for an uncooperative litigant to board at his or her own time. Any further postponement of the hearing of the summary judgment application would not have conduced to due administration of justice and would surely have been prejudicial to the plaintiff. Consequently, the plaintiff was allowed to move the application. I am satisfied on the papers that the defendant is aware of the summary judgment application and these proceedings.

[4] I stated in *Namibia Wildlife Resorts Limited v Maxuilili-Ankama*¹ that 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 without trial if the plaintiff can prove his or her claim clearly 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. Thus, summary judgment may be granted only where the court is satisfied that the plaintiff's case is unanswerable,² in the sense that the defendant has not set up a bona fide defence which is good in law or has not raised issues that ought to be tried.³

[5] In the instant proceedings, the defendant has not set up a bona fide defence which is good in law and has not raised issues against the claim that ought to be tried.⁴ Accordingly, I am satisfied that the plaintiff's case is unanswerable.⁵

¹ *Namibia Wildlife Resorts Limited v Maxuilili-Ankama* [2023] NAHCMD 94 (7 March 2023).

² *FNB Limited v Louw* [2015] NAHCMD 139 (12 June 2015).

³ *Namibia Wildlife Resorts* footnote 1.

⁴ See *Namibia Wildlife Resorts Limited v Maxuilili-Ankama* footnote 1.

⁵ See *FNB Limited v Louw* footnote 2.

[6] Based on these reasons, I grant the summary judgment application. In the result, I make the following order:

1. The amounts already paid by the defendant in terms of the Agreement filed of record are forfeited in favour of the plaintiff.
2. The defendant must make payment in the amount of N\$467 357,29 plus interest thereon, at the rate of 18.80 per cent per annum calculated from 8 August 2022 to date of full and final payment.
3. The defendant must pay the costs of suit on the scale as between attorney (legal practitioner) and client.
4. The matter is finalised and is removed from the roll.

Judge's signature:	Note to the parties:
	Not applicable.
Counsel:	
Plaintiff	Defendant
T van der Merwe of Ellis Shilengudwa Inc., Windhoek	In Person