

REPUBLIC OF NAMIBIA



**HIGH COURT OF NAMIBIA MAIN DIVISION, WINDHOEK
EX TEMPORE JUDGMENT**

Case No.: HC-MD-CIV-ACT-OTH-2023/00542

In the matter between:

AFRICAN HOLDINGS CC

PLAINTIFF

and

SUNSHINE PRIVATE SCHOOL (PTY) LTD

FIRST DEFENDANT

NOMAKANDO KANGIRA

SECOND DEFENDANT

JENNIFER GATSI

THIRD

DEFENDANT

PAULINA AMBINGA

FOURTH

DEFENDANT

Neutral citation: *African Holdings CC v Sunshine Private School (Pty) Ltd*
(HC-MD-CIV-ACT-OTH-2023/00542) [2023] NAHCMD 479
(7 August 2023)

Coram: Schimming-Chase J

Heard: 18 July 2023

Order: 18 July 2023

Written Reasons: 7 August 2023

ORDER

1. Summary judgment is refused.
2. Costs shall be costs in the cause.
3. The defendants are granted leave to defend the action.
4. The defendants are ordered to deliver a plea and counterclaim (if so advised) on or before **1 August 2023 at 15h00**.
5. The plaintiff must deliver its plea to the defendants' counterclaim, and replication to plea, if any, on or before **17 August 2023 at 15h00**.
6. The defendants may, if so advised, replicate to the plaintiff's plea to the counterclaim on or before **29 August 2023 at 15h00**.
7. The parties must file a joint case management report on or before **6 September 2023 at 15h00**.
8. The matter is postponed to **11 September 2023 at 15h30** for a case management conference.

JUDGMENT

SCHIMMING-CHASE J:

[1] I am satisfied that the defendants have disclosed a triable issue, though open to some doubt, on its right to establish any right to continue to hold against

the owner¹, and the right to occupy the premises.

[2] There is in this regard some form of dispute raised regarding ownership, either of the first defendant or of the second to fourth defendants, of the property concerned. On some level, and ex facie the first and second defendants' opposing affidavit, and the annexures, some form of lease agreement may exist between the parties. It is apparent that the parties have been engaged regarding this property since 2016.

[3] In this regard, I exercise my discretion to refuse summary judgment, as a triable issue is raised, though open to some doubt. Also and in any event, summary judgment can be refused where the affidavit delivered by the defendant does not satisfy the requirement in terms of rule 60(5)(b).

[4] The nature of summary judgment is drastic and I refuse to close the door on the defendants; and place them in a position to defend this matter to trial and to finality, even when the papers could have been somewhat more detailed and when I have doubts that the plaintiff's claim is unanswerable in the circumstances.

[5] In the circumstances, I make the following order:

1. Summary judgment is refused.
2. Costs shall be costs in the cause.
3. The defendants are granted leave to defend the action.
4. The defendants are ordered to deliver a plea and counterclaim (if so advised) on or before **1 August 2023 at 15h00**.

¹ *Shukifeni v Tow In Specialist CC* (2012) (1) NR 219 HC at para 23. Also see *Chetty v Naido* 1974 (3) SA 13A at 20 B – D.

5. The plaintiff must deliver its plea to the defendants' counterclaim, and replication to plea, if any, on or before **17 August 2023 at 15h00**.
6. The defendants may, if so advised, replicate to the plaintiff's plea to the counterclaim on or before **29 August 2023 at 15h00**.
7. The parties must file a joint case management report on or before **6 September 2023 at 15h00**.
8. The matter is postponed to **11 September 2023 at 15h30** for a case management conference.

E M SCHIMMING-CHASE
Judge

APPEARANCES

PLAINTIFF:

P Barnard

Instructed by Du Pisani Legal
Practitioners,
Windhoek

FIRST AND

SECOND DEFENDANTS:

T Chibwana

Instructed by MM Legal Practitioners,
Windhoek