

REPUBLIC OF NAMIBIA



HIGH COURT OF NAMIBIA MAIN DIVISION, WINDHOEK

JUDGMENT

Case no.: HC-MD-CIV-ACT-OTH-2020/00562

In the matter between:

KENNETH TOTO

PLAINTIFF

and

KAUJEZAMUA HENGARI

DEFENDANT

Neutral citation: *Toto v Hengari* (HC-MD-CIV-ACT-CON-2020/00562) [2023]
NAHCMD 603 (29 September 2023)

Coram: CLAASEN J

Heard: **03 April 2023 – 05 April 2023; 23 April 2023, 23 May 2023 and
10 July 2023**

Delivered: **29 September 2023**

Flynote: Contract – Oral agreement – Action for damages – Based on an alleged breach of contract – Parties gave irreconcilable versions as to who caused breach of contract – Approach of determining mutually destructive versions – Having considered the totality of the evidence the court found that the plaintiff failed to discharge the onus on a balance of probabilities – Court dismissed plaintiff's claim.

Summary: This matter concerns a claim for damages by the plaintiff against the defendant arising from a breach of an oral agreement. The plaintiff in his amended particulars of claim, claims to have suffered damages in an amount of N\$163 200 being the loss of profit he would have made from selling his products as well as other expenses related to the trip. The defendant admitted to having concluded an oral agreement to provide transport to South Africa to collect fresh produce, which trip was to take 2 days but pleaded that he is not liable for the damages. The defendant's case that the plaintiff was detained at the border and never entered South Africa. Thus the plaintiff was responsible for not having returned with the fresh produce. The plaintiff did not replicate or deal with this allegations in the defendant's plea.

Held that - The *onus* is on the plaintiff to adduce sufficient evidence in order to prove on a balance of probabilities that the defendant committed the breach of the terms and conditions of the agreement. There must be a causal link between the breach and the damages claimed, in that the damage has actually been caused by the breach.

Held further that - The parties gave irreconcilable versions as to who and what caused breach of contract. Where the evidence of the parties' presented to the court is mutually destructive, the court must decide as to which version to believe on probabilities. The approach that a court must adopt to determine which version is more probable, is to start from the undisputed facts which both sides accept, and add to them such other facts as may seem very likely to be true, as for example, those recorded in contemporary documents or spoken to by independent witnesses.

Held further that – Having considered the evidence cumulatively, the plaintiff did a poor job of presenting a cogent version, not only in respect of how the damages arose, but also how the damages was quantified. Thus the plaintiff failed to discharge the onus on a balance of probabilities.

ORDER

1. The plaintiff's claim is dismissed with costs, which costs are limited to the defendant's disbursements actually incurred.
 2. The matter is removed from the roll and it is regarded as finalised.
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JUDGMENT

CLAASEN J:

Introduction

[1] The matter concerns a claim for damages arising from breach of an alleged oral agreement. The plaintiff prays for confirmation of cancellation of the oral agreement. In addition, he prays for payment of N\$163 200 plus 20 percent interest from the date of judgment to date of final payment and cost of suit.

[2] The plaintiff is a businessman residing at Erf 3071 Effata Street, in Katutura, Windhoek.

[3] The defendant is a Namibian male residing at Erf 378, Ottawa Street, Otjomuise 2, in Windhoek.

Pleadings

[4] The plaintiff alleges in his amended particulars of claim that the parties concluded an oral agreement in terms of which the plaintiff would rent a 5 ton Nissan

truck¹, from the defendant. The amount payable for the rental was N\$20 000 per month and the purpose was to collect fresh produce in South Africa. The truck would be free of any encumbrances without need for repairs. Further terms of the agreement were that the defendant would accompany the plaintiff to South Africa where they would remain for two days only and return to Namibia.

[5] The plaintiff further alleges that he paid the N\$ 20 000 on 5 August 2019 and the truck was delivered the same day. The said truck was not in a good state, resulting in the plaintiff to effect repairs for which the reasonable cost was N\$7 000.

[6] The plaintiff also pleads that the parties travelled to South Africa, where the truck was seized by an unknown third party, to whom the defendant was indebted. The plaintiff then had to pay N\$20 000, on behalf of the defendant, to secure the release of the truck, to enable them to return to Namibia.

[7] Thus the plaintiff claims that as a result of the defendant's breach of the agreement, the plaintiff was unable to purchase the fresh produce and had to stay 5 (five) days in South Africa to wait for the truck.

[8] He gave a breakdown of the claim as follows:

- a) N\$120 000 in respect of loss of income;
- b) N\$20 000 for the rental of the truck for the month of August 2019;
- c) N\$20 000 paid for the release of the truck;
- d) N\$7 000 in respect of repairs to the truck;
- e) N\$5 000 in respect of fuel expenses;
- f) N\$1 200 in respect of accommodation for Plaintiff and Defendant in South Africa.'

[9] The defendant repaid an amount of N\$10 000, which brought the claim to N\$163 200.

¹ A Nissan Cabstar Registration no N161-865W.

[10] The defendant in his plea, admits to an oral agreement with the plaintiff wherein the plaintiff hired him (as driver) and one of his 5 ton trucks, to transport the plaintiff to South Africa. The agreed price was N\$ 15 000 for the trip plus the plaintiff would pay for the fuel and accommodation.

[11] He denies having received N\$20 000, and instead pleads that the plaintiff paid him N\$12 000 as a deposit and was still owing N\$3000 as per the oral agreement.

[12] The defendant further pleads that during the trip to South Africa, the plaintiff was denied entry at the border, and thus remained there. In amplification of that he pleads that he proceeded to Johannesburg but the store was not amenable to give the produce to the defendant, as the store had a credit arrangement with the plaintiff. The defendant also avers that he paid for his own accommodation in Johannesburg.

[13] The defendant also pleads that upon his return from the store in Johannesburg when he arrived at the border the plaintiff instructed him to return to South Africa to collect the fresh produce, but the defendant refused. As a result the agreement between the parties was cancelled. After that the parties agreed that the defendant would reimburse the plaintiff N\$10 000 and keep the N\$2 000 for the accommodation cost in South Africa.

Summary of the evidence

[14] The plaintiff presented evidence of two witnesses, which included himself.

[15] Mr Toto testified that Mr Muraranganda (the second witness for the plaintiff) introduced him to the defendant on 10 July 2019. The plaintiff and the defendant concluded an oral agreement for rental of the defendant's truck in the amount of N\$20 000 and that the defendant will be the driver to and from Johannesburg to collect fresh produce. Mr Toto testified that he paid for the fuel and the necessary permits. On 30 July 2019, he paid N\$ 5 000 to the defendant for preparation of the tyres, service and the painting of the loading bin. Thereafter on 5 August 2019 he deposited N\$15 000 into the defendant's bank account as final payment for the rental of the truck.

[16] On 6 August 2019, he, the defendant and Mr Muraranganda travelled to South Africa where they intended to collect the fresh produce the next day. However, that same afternoon in Kempton Park, an unknown man approached the defendant. The unknown man said the defendant owed him money and ended up seizing the truck. The defendant begged him to pay N\$20 000 for the release of the truck. In exchange for that the defendant offered to arrange for a silver Toyota Wish vehicle to be delivered to the plaintiff's house as a guarantee.

[17] According to the plaintiff, he paid the unknown man for the truck and they ended up spending a week in South Africa. They resided at a Bed and Breakfast in Kempton Park, Johannesburg. Four invoices² were handed related to accommodation costs. He testified that the cost was N\$ 300 per night at that Bed and Breakfast and the total for the four nights was N\$1 200. Further along in his testimony he elaborated that they actually spend five days because they did not have transport to return to Namibia. He said that the truck was only given back on Saturday.

[18] He expanded on the fuel claim, that it amounted to N\$5 000. In support of that he tendered three invoices.³ One of the documents are illegible. One of the invoices fuel receipts show an amount of R973 and the other one shows that R1 246.16 was paid at a place called Sekoma Fuel in Sekoma, Botswana.

[19] The plaintiff thus claims that the defendant owes him N\$20 000 for rental of the truck; N\$20 000 for the release of the confiscated truck, N\$10 000 for fuel and accommodation, N\$1 200 for accommodation as well as N\$30 000 which is the profit he would have made from the produce he intended to buy and sell. The plaintiff further testified that the defendant botched him with the Toyota Wish vehicle as the police seized the vehicle.

[20] In regard to the loss of his profit, he clarified that he intended to buy 440 bags of potatoes of which the cost price was N\$30 per bag at the time. He would've sold them

² Exhibit C.

³ Exhibit D.

in Namibia for N\$100 per bag, making a profit of N\$70 per bag, thus he suffered loss of profits in the amount of N\$30 800.

[21] During cross examination he was questioned about the purported repairs he paid. The plaintiff answered that he paid N\$5 000 for the truck to be serviced and to have the loader painted.

[22] The defendant confronted the plaintiff with his version that the plaintiff was not granted entry into South Africa, ostensibly because he overstayed in the past. The witness denied that he was detained indefinitely. He explained he was kept there for 2 hours but after he told the immigration officials that he will return the next day, they let him through. The defendant questioned the plaintiff as to what proof he has to show that he was in South Africa. The plaintiff said he has receipts of the accommodation establishment.

[23] The defendant put to the plaintiff that he inflated the accommodation and fuel cost with N\$3 800 in his claim. The defendant deduced that because in oral evidence the plaintiff only mentioned N\$1 200 for accommodation and N\$5 000 for fuel. That he said is different to the \$10 000 on fuel and accommodation, as per the plaintiff's witness statement. The plaintiff replied that the difference accounted for the meals and that he had to hire a car in Johannesburg to enable them to go and search for the truck. Furthermore, that they spent a night at a Bed and Breakfast at Swartruggens on their journey into South Africa, for which he also paid. In respect of one of the fuel receipts he also corrected himself saying that he made a mistake with the receipt of R973 as that must be from Tsotsa in Botswana.

[24] The defendant also attacked the plaintiff for not having receipts for each and every amount that he claims. The plaintiff answered that much of that was paid in cash for which there was no receipts, namely the first N\$5 000 was cash given to the defendant, that he deposited N\$15 000 into the defendant's bank account, and that it was also cash in the amount of N\$ 20 000 that had to be paid to release the truck. He added that he had the Totoya Wish' papers which the defendant at the time offered as a guarantee for the monies.

[25] Mr Nangeui Muranganda also testified for the plaintiff and said that he and the plaintiff intended to open a business to sell vegetables. The witness knew that the defendant had a truck for hire to take them to South Africa to buy the produce. The three of them drove to South Africa with the said truck on 6 August 2019.

[26] Upon arrival in South Africa the defendant told them to go to Kempton Park, where the defendant met a person by the name of Sposiso. Sposiso and the defendant spoke for about 10 minutes in Sosiso's vehicle. Thereafter the defendant got into the truck and drove away in an attempt to escape from Sposiso. At some stage the defendant stopped the truck, got out and ran away. At the time Sposiso told them that the defendant owes him money and that he will confiscate the truck.

[27] This witness and the plaintiff walked to the place where they booked accommodation where they then found the defendant. The defendant was angry at them saying it is their fault that the truck was taken. This witness confirms the evidence by the plaintiff that they had to pay N\$20 000 to get the truck but that the defendant offered a Toyota Wish as guarantee. He also testified that his family confirmed that the vehicle, with its papers and keys were dropped at his house in Windhoek. However, eventually the defendant came with the police and took the car back.

[28] In re-examination this witness explained that the plaintiff and the defendant was taking a long time at the border and when he enquired about it he learnt that the plaintiff's passport only had a few days before it expired. However that was 'resolved' and the plaintiff entered South Africa and travelled with him and the defendant to Johannesburg.

[29] In cross examination tested the defendant's version about the plaintiff's immigration problem and detention at the border. The witness answered that it was merely a delay, but plaintiff did get to South Africa and made the various payments. The defendant put to him that he voluntarily returned the car. The witness disagreed and repeated his earlier answer. It was put to him reason they did not get the produce, was because the supplier did not want to give it because plaintiff was not present. The

witness disagreed and said it was pointless for them to go to the supplier because they had no money left because of the defendant.

[30] I proceed to the evidence presented for the defendant's case. Mr Kaujezama Hengari testified that the plaintiff hired a truck from him for N\$23 000 to go to South Africa. He agreed. The plaintiff paid N\$13 000 and still owes the rest. On route between Botswana and South Africa the immigration officials did not permit the plaintiff to enter South Africa. He testified that he and Mr Muraranganda left the plaintiff to sort out his problem with the immigration officials. Upon reaching the suppliers in Johannesburg, the suppliers did not give the produce. The plaintiff told them to wait for a day as he apparently sorted out the immigration problem, but when the plaintiff did not show up after 2 days, the defendant decided to drive back. Once back at the border, the plaintiff wanted him to return and he refused and came back to Namibia. Because of that refusal the plaintiff wanted him to return N\$10 000 which was why he gave his aunt's car and later the lawyer said he must pay for the loss of the plaintiff. He furthermore testified that Mr Muraranganda, whom he knew as 'Seun' was actually the plaintiff's brother in law.

[31] At the end of his evidence in chief, the defendant indicated that he intends to tender additional evidence. The matter was then adjourned for him to apply for further discovery. Despite being given several postponements for that, he failed to bring a proper application, resulting in the matter eventually continuing with cross-examination.

[32] During cross-examination his version, that the plaintiff never entered South Africa came under attack. He insisted on his version. It was pointed out to him that he had no reason to proceed to South Africa, if the plaintiff had stayed at the border and that he had no proof that he paid for anything in South Africa. He said that the agreement was that the plaintiff would pay everything in South Africa and all the defendant had to contribute was himself and his truck, therefore he did not take along money.

[33] It was put to him that the receipts and invoices show that the plaintiff paid these items. The defendant answered that there is no documentary proof that his truck was seized and that they paid up to Botswana but all the other receipts were fabricated.

[34] The cross-examination also tested the pledge of the Toyota Wish. Mr Hengari answered that the discussions about the pledge happened at the border and the reason he did that was because the plaintiff wanted him to refund N\$10 000 to the plaintiff.

[35] In closing submissions, counsel for the plaintiff reiterated the plaintiff's version and submitted that the plaintiff claims N\$80 000 from the defendant and that only N\$10 000 was paid by the defendant. In respect of the fuel expenses, he argued that the oral evidence that the cost thereof was N\$5 000 should be accepted, even though there was receipts for only R973 and N\$1 246. As for the accommodation cost, he referred the court to the receipts for that. He repeated the formula given by the plaintiff as to the calculations for the intended potatoes sale, saying there was no contradictory evidence so the court should accept the amount for the loss of profit. These losses, he argued, were all attributable to the defendant.

[36] He argued that the defendant did not deal with the seizure of the truck and although the defendant say that the plaintiff was detained at the border he has no proof thereof. According to him the fact that the defendant is silent on that was questionable. He furthermore argued that the court should not believe the defendant's contention that the plaintiff was not in South Africa as the plaintiff has accommodation receipts for 2 nights there.

[37] The defendant in his closing argument submitted that the court should not uphold the claim. He reiterated that the purported business partner of the plaintiff is actually a relative of the plaintiff who lied about the border problem and also lied about the Toyota Wish being brought to his house. He argued that the court should question the receipts and the claim in total.

Legal principles and application thereof

[38] It is trite that the plaintiff bears the burden to prove the allegations claimed to sustain his claim on a balance of probabilities. In order to succeed with a claim for damages caused by a breach of contract, the plaintiff must allege and prove that (a)

there has been a breach of contract by the defendant, (b) the plaintiff has suffered damages, as well as the exact extent of the damage, and (c) that the damages were suffered as a direct result of the breach of contract. In other words, the *onus* is on the plaintiff to adduce sufficient evidence in order to prove on a balance of probabilities that the defendant committed the breach of the terms and conditions of the agreement. There must be a causal link between the breach and the damages claimed, in that the damage has actually been caused by the breach.⁴

[39] I proceed to the versions by the plaintiff and the defendant respectively. The parties' gave two irreconcilable versions as to what happened in South Africa and who is to blame for the inability to return with the fresh produce, which was the reason behind the agreement. The process whereby courts resolve two irreconcilable versions is now well established as follows:

a) where the evidence of the parties' presented to the court is mutually destructive, the court must decide as to which version to believe on probabilities;⁵ and

b) the approach that a court must adopt to determine which version is more probable, is to start from the undisputed facts which both sides accept, and add to them such other facts as may seem very likely to be true, as for example, those recorded in contemporary documents or spoken to by independent witnesses.⁶ Mtambanengwe AJA eloquently stated it as follows:

'This...is how I go about the business of finding facts. I start from the undisputed facts which both sides accept. I add to them such other facts as seem very likely to be true, as for example, those recorded in contemporary documents or spoken to by independent witnesses like the policeman giving evidence in a running down case about the marks on the road. I judge

⁴ A J Kerr. *The Principles of the Law of Contract* 6 ed at 739.

⁵ *Stellenbosch Farmers' Winery Group Ltd and Another v Martell et Cie and Others* 2003 (1) SA 11 (SCA) at 14H – 15E, *National Employers' General Insurance Co Ltd v Jagers* 1984 (4) SA 437 (E) at H 440E– G: Approved and followed in *Life Office of Namibia Ltd (Namlife) v Amakali and Another* 2014 (4) NR 1119 (LC) *Harold Schmidt t/a Prestige Home Innovations v Heita* 2006 (2) NR at 556; *Otto v Ekonolux* (I 3094/2012) [2013] NAHCMD 165 (14 June 2013).

⁶ *Motor Vehicle Accident Fund of Namibia v Lukatezi Kulubone* Case No SA 13/2008 (unreported) para 24.

a witness to be unreliable, if his evidence is, in any serious respect, inconsistent with those undisputed or indisputable facts, or of course if he contradicts himself on important points. I rely as little as possible on such deceptive matters as his demeanour. When I have done my best to separate the truth from the false by these more or less objective tests I say which story seems to me the more probable, the plaintiff's or the defendant's.⁷

[40] It is common cause that the plaintiff and the defendant concluded an oral agreement in terms of which the plaintiff hired the defendant and his truck to provide transport to Johannesburg, for the plaintiff to purchase fresh produce. Further terms common to the parties were that plaintiff was to pay for the fuel and accommodation expenses related to the trip and it would have been two nights' accommodation only. From that point forward each party had a different tale to tell.

[41] The plaintiff's version is that on the very afternoon that they arrived in Johannesburg they checked into a place called Queen's Suite Lodge. Thereafter, they drove to Kempton Park at the behest of the defendant, where the defendant met with a person to whom the defendant owed money. The details of the alleged encounter was set out earlier which makes it unnecessary to repeat it, save to say that the hired truck was seized by one Sposiso. The plaintiff's case is that the seizure left them without transport and it constitutes a breach of his oral agreement with the defendant.

[42] Furthermore, the plaintiff paid N\$20 000 at the behest of the defendant, to get the truck back and the plaintiff paid extra nights' accommodation and food, given that the truck was only returned by the Saturday of that week. Consequently, he claims these expenses as well as the loss of the profit he would have made if they were able to return with fresh produce and sell it to his customers.

[43] The defendant's case is that he is not liable for damages, as the plaintiff's immigration problems caused the expenses claimed as damages. His case was that they left the plaintiff at the border between Botswana and South Africa. Although the defendant and Mr Muraranganda proceeded to Johannesburg, there was no seizure of

⁷ Ibid.

the truck. As for the vegetables they intended to buy, the supplier did not want to give the vegetables as it had a deal with the plaintiff to pay them after he has sold the vegetables. Thus, after four days the defendant and the second witness drove back to the border where the plaintiff wanted the defendant to go back to Johannesburg for the fresh produce, but he refused. That is the reason why he pledged the Toyota Wish.

[44] It is noteworthy that the plaintiff did not replicate to the defendant's plea wherein the defendant pleaded that the plaintiff could not enter the border into South Africa because of plaintiff's immigration problems. Had this allegation by the defendant been a fabrication, the replication would have been the pleading to answer to that and refute it. It was not done. In that same line the plaintiff's witness statement is silent and offered no response to that.

[45] Moreover, it is also noteworthy that the plaintiff when asked about his passport, which could prove or disprove the entry into South Africa, all that was said was that the passport expired. Even if the passport expired, the entry stamp would still be in the passport, if it was indeed the case. Although a passport is not the only way to prove that indeed the plaintiff entered South Africa, it could have refuted the defendant's 'fabrication' in no uncertain terms. The plaintiff opted to not tender such evidence, in the wake of such an allegation. That coupled with the failure to refute it in pleading is a significant blow to the plaintiff's case as to how the damages arose and whose fault it was that they returned to Namibia with no fresh produce.

[46] Counsel for the plaintiff contended that the defendant did not deal with the truck's seizure as averred to by the plaintiff. In looking at the defendant's plea, he categorically denied it and put the plaintiff to proof the allegation. All the court had on this was the oral evidence of the plaintiff and his witness. The corroboration which counsel for the plaintiff referred to is not from an independent witness, but from a relative of the plaintiff, which affects the potency thereof. It could also not be missed that the plaintiff's evidence on the incident was rather scant, as opposed to that of his witness who had much more detail, which also raises a question as to whether the plaintiff experienced such an incident.

[47] The amounts in the claim and the quantification thereof are not problem free either. Firstly there is discrepancy in the total amount claimed, which suggests that the plaintiff is not sure of the amount of the claim. I say this because in the amended particulars of claim the total amount was set out as N\$163 200 whereas the amount in the witness statement came to a total of N\$80 000, of which N\$ 10 000 was paid. No explanation was offered for the significant discrepancy in the total of the claim between the pleadings and the evidence.

[48] Needless to say in a damages claim a plaintiff has to satisfy the court that the amounts claimed are fair and reasonable. In this regard it was stated in *Grove v Endjala*⁸ at para 87:

‘When it comes to the assessment of the alleged damages suffered by a plaintiff it has been held that where damages can be assessed with mathematical precision, the plaintiff is expected to adduce sufficient evidence to prove such damages. However, where that cannot be done, the plaintiff would be expected to adduce evidence as available to him or her in order to quantify his or her damages.’

[49] The quantification of the respective claims was not done systematically, nor did the receipts that were tendered present a clear and complete picture. Even if I accept that there would be no receipt for the amount allegedly paid for the release of the truck, there are other items for which a receipt or paper trail could have been obtained. It is difficult to construe why the plaintiff did not offer in evidence, not even an excerpt of his bank statement which would have documented the N\$15 000 allegedly deposited into the defendant’s bank account.

[50] The fuel receipts covered the Botswana part of the journey only. When the anomaly of refuelling twice on the same date in the same place was pointed out the plaintiff, he admitted to be mistaken about that and offered that one of the receipts must

⁸ *Grove v Endjala* (HC-MD-CIV-ACT-CON-2019/05339) [2023] NAHCMD 117 (14 March 2023)

be for fuel purchased in Tstotsa. That can hardly be the evidence of a person who knew where he refuelled and what he paid for that. On the plaintiff's own version, they would have had to refuel in South Africa, be it on their way to Johannesburg or even at the point of departure from Johannesburg. It begs the question as to why the plaintiff had no receipt for fuel in South Africa, as he testified that the receipts was for fuel purchased in Botswana. All it does, is to add credence to the version by the defendant that the plaintiff did not accompany them into South Africa.

[51] In relation to the claim for loss of profit, the plaintiff purported to explain his formula as to how he arrived at the profit he would have made. That was done without any expert from the industry to assist the court as to whether these are reasonable figures for the said potatoes sales.

[52] In addition, the plaintiff and his witness contradicted each other as to at whose house the Toyota Wish was delivered, with each of them saying it was at his house. In the absence of evidence that they resided in the same house, it appears that one was not truthful on that, which pokes another hole in the plaintiff's case.

[53] At the end of the day the plaintiff had a very limited paper trail to support his version as to what caused the loss and the amounts claimed for it. There are two nights' accommodation being 09.08.2019 and 10.08.2019 in his name. On the other side, the receipts for the preceding two nights bore than name of the defendant as the person from whom the money was received. That and the word of his brother in law. As said earlier, the absence of any fuel receipt for South Africa, does not make sense if indeed the plaintiff was there with the group and paid for everything. Nor did he tender his passport, which could have been a lethal blow to the defendant's version that the plaintiff did not accompany them from the border towards South Africa. The unsystematic calculation and insufficient methodology for the purported loss of profit and the contradiction between the plaintiff and his witness did little to build a reliable version of loss caused by the defendant and the amount thereof.

[54] Therefore, in the face of the plea that was presented, with respect, the plaintiff did a poor job of painting a cogent version, not only in respect of how the damages

arose, but also how the damages was quantified. Thus, on a balance of probabilities, I am not satisfied that the plaintiff managed to discharge the onus on a balance of probabilities.

As regards to costs, the general principle is that costs follow the cause. There is no reason to deviate from that. The defendant, being a lay litigant, is thus entitled to disbursements, limited to only actual disbursements that have been reasonably incurred.⁹

[55] Therefore I make the following order.

1. The plaintiff's claim is dismissed with costs, which costs are limited to the defendant's disbursements actually incurred.
2. The matter is removed from the roll and is regarded as finalised.

Judge

C Claasen

⁹ *Standard Bank Namibia Ltd v Nationwide Detectives and Professional Practitioners CC and Another* (2051 of 2007) [2013] NAHCMD 200 (17 July 2013).

APPEARANCES

PLAINTIFF

D Conradie

Conradie & Damaseb Legal Practitioners

DEFENDANT:

K Hengari

In person