

REPUBLIC OF NAMIBIA



IN THE HIGH COURT OF NAMIBIA, MAIN DIVISION, WINDHOEK
RULING

Case Title: KATRINA SHIMBULU vs STANDARD BANK NAMIBIA LIMITED AND OTHERS	Case No: HC-MD-CIV-ACT-CON-2022/00854
	Division of Court: HIGH COURT (MAIN DIVISION)
Heard before: HONOURABLE MR JUSTICE PARKER, ACTING	Date of hearing: 15 FEBRUARY 2023
	Delivered on: 7 MARCH 2023
Neutral citation: <i>Shimbulu v Standard Bank Namibia Limited</i> (HC-MD-CIV-ACT-CON-2022/00854) [2023] NAHCMD 96 (7 MARCH 2023)	
IT IS ORDERED THAT: 1. The application to consolidate Case No. 2022/00854 and Case No. 2022/03059 is dismissed with costs, as capped by rule 32(11) of the rules of court. 2. Counsel shall attend a status hearing on 8 March 2023 for the court to consider the further conduct of the matter.	
Reasons for the Order:	
[1] This is an application to consolidate two separate actions: Case No. HC-MD-CIV-	

ACT-CON-2022/00854 instituted on 19 June 2019 and Case No. HC-MD-CIV-ACT-OTH-2022/03059, instituted on 15 July 2020. Ms Jacobie represents the applicant, and Ms Kuzeeko the respondent.

[2] The starting point in determining such application is to underline the purpose of a consolidation of actions under rule 41 of the rules of court (equivalent to rule 11 of South Africa's Uniform Rules). The purpose of a consolidation of actions under rule 41 is this: 'to have issues which are substantially similar tried at a single hearing so as to avoid the disadvantages attendant upon a multiplicity of trials'.¹ Above all, 'the paramount test is convenience'.² And it will not be convenient if the consolidation will occasion substantial prejudice to any party. And the issues will not be substantially similar where, for instance, completely dissimilar reliefs are sought; each case governed by its own principles of law and practice; and the parties are not the same.

[3] The case of *Karslruh Number One Farming Close Corporation v De wet Esterhuizen and Another*³ which Ms Jacobie referred to the court destroys the applicant's case rather than support it. In that matter, unlike the instant matter, the parties were exactly the same in all three matters.

[4] Furthermore, in Case No. 2022/00854 the plaintiff seeks, among other things, a declaration that the sales agreement concluded between her and the seventh defendant (respondent) on 19 June 2019 is valid. The relief sought does not concern the other parties in both matters. Therefore, if a declaratory order was granted in due course, that order would plainly be *brutum fulmen* as respects the unconcerned parties. Thus, the unconcerned parties would have taken part unnecessarily in proceedings that do not concern them, much to their substantial prejudice.

[5] In Case No. 2022/03059 the mandatory relief sought is directed at the Agricultural Bank of Namibia, the first defendant, to provide funds to the plaintiff for her to purchase the farm which is the subject matter of both cases. Significantly, the Agricultural Bank of

¹ HJ Erasmus *Superior Court Practice* (1995) at B1-98.

² *Ibid* at B1-99.

³ *Karslruh Number One Farming Close Corporation v De wet Esterhuizen and Another* [2018] NAHCMD 388 (26 November 2018).

Namibia is not a party in Case No. 2022/00854. Thus, any evidence led in Case No. 2022/00359 will not be relevant to Case No. 2022/00854.⁴

[6] Moreover, as Ms Kuzeeko submitted, apart from all else, the case management procedures to pursue in terms of the rules before trial with regard to Case No. 2022/03059 have almost been completed. The same cannot be said of Case No. 2020/00854. The upshot is that the parties who are not concerned with the other case will have to wait – for how long, the plaintiff could not say. For instance, although Standard Namibia Limited is the first defendant in Case No. 2022/00854, it is also the second defendant in Case No. 2022/03059; but, as Ms Kuzeeko submitted, Standard Bank has not defended the action in the latter matter, because it has no legal interest in the subject matter of the litigation in that case and its outcome.

[7] From what I have said above, I conclude that (a) the issues in both cases are not similar; (b) the parties are not substantially the same in both cases; (c) the reliefs sought are dissimilar; and (d) the parties will suffer substantial prejudice if the actions were consolidated. The irrefragable result is that it is not convenient to consolidate the two actions in terms of rule 41 of the rules of court.

[8] Consequently, I find that the applicant has failed to make out a case for the consolidation of the two actions. In the result, I make the following order:

1. The application to consolidate Case No. 2022/00854 and Case No. 2022/03059 is dismissed with costs, as capped by rule 32(11) of the rules of court.
2. Counsel shall attend a status hearing on 8 March 2023 for the court to consider the further conduct of the matter.

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

⁴ See *Karslruh Number One Farming Close Corporation v De wet Esterhuizen* footnote 3.

Counsel:	
Plaintiff/Applicant	1st and 7th Defendants/Respondents
T Jacobie of Henry Shimutwikeni & Co Inc, Windhoek	M Kuzeeko of Dr Weder, Kauta & Hoveka Inc., Windhoek