

**REPUBLIC OF NAMIBIA**



**IN THE HIGH COURT OF NAMIBIA, MAIN DIVISION, WINDHOEK  
PRACTICE DIRECTIVE 61**

Case No: HC-MD-CIV-ACT-OTH-2021/01396

In the matter between:

**ANDRE FRIEDEL CASTRO DAUSAB**

**PLAINTIFF**

and

**THE GOVERNMENT OF THE REPUBLIC OF NAMIBIA**

**DEFENDANT**

**Neutral citation:** *Dausab v The Government of the Republic of Namibia* (HC-MD-CIV-ACT-OTH-2021/01396) [2024] NAHCMD 143 (28 March 2024)

**Coram:** OOSTHUIZEN J

**Heard:** 16 January 2024

**Delivered:** 28 March 2024

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**ORDER**

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**IT IS ORDERED THAT:**

1. The plaintiff's particulars of claim in its present form is vague and embarrassing.
2. An *amicus curiae* is appointed to assist the plaintiff in re-constituting his particulars of claim.
3. The plaintiff, duly assisted by the *amicus curiae*, is accorded time until 15 May 2024 to file the amended particulars of claim.
4. The defendant retains its rights in terms of rule 23 of the High Court Rules.
5. The matter is postponed to 20 May 2024 at 15h00 for a Status Hearing.

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**RULING**

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OOSTHUIZEN J:

[1] Whether an exception on the ground of being vague and embarrassing is established would depend upon whether it complies with rule 45(5) of the High Court Rules. This rule requires that every pleading must contain a clear and concise statement of the material facts on which the pleader relies for his or her claim with sufficient particularity to enable the opposite party to identify the case that the pleading requires him or her to meet. Assessing whether a pleading is vague and embarrassing is now to be undertaken in the context of rule 45 and the overriding objectives of judicial case management. Those objectives include the facilitation of the resolution of the real issues in dispute justly and speedily, efficiently and cost effectively as far as practicable by saving costs by, among others, limiting interlocutory

proceedings to what is strictly necessary in order to achieve a fair and timely disposal of a cause or matter.<sup>1</sup>

[2] The plaintiff's "NOTICE IN TERMS OF RULE 52(1)" dated 26 November 2021 shall be regarded as plaintiff's lay attempt to amend and substitute his "Particulars of Claim" dated 1 March 2021, subsequent to defendant's 'Notice in terms of rule 57(2)' dated 12 November 2021. Between 26 November 2021 and April 2023 this case migrated from Tomassi, J to myself.

[3] The defendant's written objections dated 28 September 2023 are the objections in terms of rule 52(2) and (4). The defendant initially caused a hearing date for exceptions to be set down for September 2023 and subsequently realised that the plaintiff substituted its particulars of claim.

[4] Paragraphs 5 to 7 do not comply with rule 45(5) and (6) in that dates when, where, by whom and specificity are lacking.

[5] Paragraphs 8 to 13 are specifically vague and embarrassing in that it fails to specify the alleged lost data; fails to meaningfully contribute and complete the plaintiff's cause of action; fails to quantify the plaintiff's alleged damages meaningfully and intelligibly; fails to rationally plead a connection between cause and effect; fails to mount a proper constitutional challenge and pleads personal injuries and disability where no physical injury to the *corpus* of the plaintiff is alleged.

[6] Ad claim 2. Paragraphs 14 to 23. The contents of paragraphs [4] and [5] are applicable and repeated. Plaintiff identifies the Correctional Service Act 9 of 2012, mentions certain regulations and directives but fails to mount proper constitutional challenges and generally rumbles on.

[7] The plaintiff is suing the Government of the Republic of Namibia represented by the Minister of Home Affairs, Immigration, Safety and Security as head of the Namibia Correctional Service.

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<sup>1</sup> *Van Straten NO v Namibia Financial Institutions Supervisory Authority* 2016 (3) NR 747, para [19].

[8] The plaintiff's main justiciable issue is the alleged unlawful and wrongful removal of unspecified data from his laptop during the period mid-April 2020 to 5 August 2020 without his approval or consent.

[9] The plaintiff acted in person without the assistance of a legal practitioner. The plaintiff is a lay person. The manner and way in which the plaintiff constitute his pleadings, are confusing, vague and unnecessarily long winding.

[10] The objections by the defendant succeed and the court finds that the claims by the plaintiff are vague and embarrassing to the extent that it shall severely prejudice the defendant if it is ordered that the defendant shall plead thereto in its present form.

[11] No costs order shall be made against the plaintiff.

[12] The court shall appoint an *amicus curiae* to assist the plaintiff and avail adequate time for consultation, taking of instructions and the re-constitution of particulars of claim.

[13] Consequently, the following orders are made:

1. The plaintiff's particulars of claim in its present form is vague and embarrassing.
2. An *amicus curiae* is appointed to assist the plaintiff in re-constituting his particulars of claim.
3. The plaintiff, duly assisted by the *amicus curiae*, is accorded time until 15 May 2024 to file the amended particulars of claim.
4. The defendant retains its rights in terms of rule 23 of the High Court Rules.

5. The matter is postponed to 20 May 2024 at 15h00 for a Status Hearing.

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G H OOSTHUIZEN

JUDGE

## APPEARANCE

PLAINTIFF: A F C Dausab  
In Person  
C/O Windhoek Correctional Facility Inmate at: Hardap  
Correctional Facility.

DEFENDANT: N Kauari  
Instructed by the Office of the Government Attorney, Windhoek