

REPUBLIC OF NAMIBIA



IN THE HIGH COURT OF NAMIBIA, MAIN DIVISION, WINDHOEK

EX TEMPORE RULING

Practice Direction 61

Case Title: MICHAEL TUGALUKENI SHAPUMBA ILLONGA and NAMIBIA PUBLIC WORKERS UNION(NAPWU) PRIME MINISTER OF THE REPUBLIC OF NAMIBIA INSPECTOR GENERAL OF THE NAMIBIAN POLICE FORCE ATTORNEY GENERAL OF THE REPUBLIC OF NAMIBIA PUBLIC SERVICE COMMISSION	Case No: HC-MD-CIV-ACT-OTH-2021/04078 Division of Court: Main Division Heard: 19 March 2023
	Plaintiff 1st Defendant 2nd Defendant 3rd Defendant 4th Defendant 5th Defendant
Heard before: Honourable Lady Justice Rakow	Delivered: 19 March 2024 Typed Reasons released: 28 March 2024
Neutral citation: <i>Illonga v Namibia Public Workers Union (NAPWU)</i> (HC-MD-CIV-ACT-OTH-2021/04078) NAHCMD 144 (28 March 2024)	
Order:	
1. Absolution from the instance granted.	

2. The plaintiff to pay the costs of the first defendant.
3. The matter is finalised and removed from the roll.

Reasons for order:

RAKOW J

Introduction

[1] In the present matter, the plaintiff sued the first defendant for the following:

‘1.1 NAPWU be ordered to pay the plaintiff for unliquidated damages caused at such a rate and for such periods as the court deem just.

1.2 The Office of the Prime Minister be ordered to reinstate back to work the plaintiff with immediate effect and compensate the plaintiff for all unliquidated damages caused at such a rate for such periods as the court deem just.

1.3 The Namibian Police force be ordered to pay the plaintiff for unliquidated damages caused at such a rate and for such periods as the court deem just.

1.4 Cost of suit.’

[2] After closing of the plaintiff’s case the defendant applied for absolution of the instance which was argued at the same time. The court thereafter did not stand down for judgement but delivered a short judgement at the same time.

Brief argumentsThe defendant

[3] Mr Kadhila on behalf of the defendants argued that the nature of the contact between a union and a member, is all the makings of a contract of mandate. In the contract of mandate, where a member alleges negligence on the part of the union, the member must allege, number 1, the mandate, number 2, a breach of the mandate, number 3 negligence on the part of the union and number 4, the damages suffered. The plaintiff has failed to prove: 1. a breach of mandate; 2. negligence on the part of the defendant and; 3. the damages that he suffered. He also failed to obtain services of an expert witness to provide the court with expert evidence as to how damages should be calculated in his claim for unliquidated amount. The plaintiff came to court unprepared, wasted the court’s time and was a terrible witness. He led evidence that contradicts his own case

and refused to answer simple questions. The plaintiff has not made out a *prima facie* case as there is no evidence relating to his claim. His claim is not supported by any of the evidence that he advanced and presented to the court.

The plaintiff

[4] Mr Illonga, the plaintiff in person argued that the defendants forged his document, they uttered his document and forged it. The plaintiff further stated as follows: 'there is no way that proof is going to show that, that document is from him, the plaintiff. The plaintiff argued that it is the fraudulent document, that is why NAPWU removed the date and the plaintiff's signature. The plaintiff states he has no evidence. That summary, there is somewhere I should be able to sign because, although I have signed there is no evidence to prove that summary is mine.'

[5] The plaintiff further stated that: 'the truth finally emerged on 7 April 2021, that the first defendant intentionally, unlawfully, wrongly, fraudulently, falsely, dishonestly and secretly waited without informing or having the consent or the knowledge of the plaintiff until when the prescribed period to file for the arbitration case had lapsed just for him to finally file for arbitration of the matter with the Labour Commissioner Office on 10 March 2010 while all this time wrongly unlawfully, falsely and fraudulently misrepresenting to the plaintiff that he filed the case with the Labour Commissioners Office, for the case arbitration hearing on the same afternoon of 31 March 2009.'

Reasons

[6] The plaintiff claimed that NAPWU (Namibia Public Workers Union) ordered to pay the plaintiff for unliquidated damages caused at such a rate and for such period, as the court deems just. The Office of the Prime Minister be ordered to reinstate back to work, the plaintiff with immediate effect and compensate the plaintiff with all unliquidated damages. Also, such a rate and for such periods as the court deems just. The Namibian Police Force be ordered to pay the plaintiff for unliquidated damages caused at such a rate and for such periods, as the court deems just. That is according to the particulars of claim of the plaintiff. There was a special plea, which dealt with the complaint against the Office of the Prime Minister for reinstatement as well as the police for the plaintiff's arrest. So, those two claims no longer exist.

[7] What remained on this, is that NAPWU be ordered to pay the plaintiff unliquidated

damages caused at such a rate and for such period, as the court deems just. Now, unfortunately, the court cannot come up with the plaintiffs damages. It is impossible for the court to come up with the amount suffered as damages by the plaintiff. So, the court took into account what was submitted by the parties, the court finds that damages was not placed before the court and therefore not proved. It might even be that the plaintiff handed to NAPWU the document, however that does not take the matter any further. The plaintiff failed to prove the other elements of this matter. And therefore, the plaintiff is not entitled to his relief.

Order

[8] I make the following order:

1. Absolution from the instance granted.
2. The plaintiff to pay the costs of the first defendant.
3. The matter is finalised and removed from the roll.

Judge's signature	Note to the parties:
E RAKOW Judge	Not applicable
Counsel:	
Plaintiff:	First Defendant
M Illonga The plaintiff, in person Windhoek	A Kadhila Of Sisa Namandje & Co. Inc Windhoek