

REPUBLIC OF NAMIBIA



IN THE HIGH COURT OF NAMIBIA, MAIN DIVISION, WINDHOEK  
RULING IN TERMS OF PRACTICE DIRECTION 61

<b>Case Title:</b>  Ningiree Daleen Kavezepa  and  Berthold Morwe	<b>Case No:</b> HC-MD-CIV-ACT-DEL-2023/03092
Plaintiff	<b>Division of Court:</b> Main Division
Defendant	<b>Heard on:</b> 14 March 2024
<b>Heard before:</b> Honourable Mr Justice Usiku	<b>Delivered on:</b> 9 April 2024
<b>Neutral citation:</b> <i>Kavezepa v Morwe</i> (HC-MD-CIV-ACT-DEL-2023/03092) [2024] NAHCMD 160 (9 April 2024)	
<b>Order:</b> <ol style="list-style-type: none"><li>1. The plaintiff's exception is upheld.</li><li>2. The defendant's plea and counterclaim are set aside and the defendant is granted leave to file an amended plea and/or counterclaim, if so advised within 15 days of this order.</li><li>3. The defendant is ordered to pay the plaintiff's costs occasioned by the exception.</li><li>4. The matter is postponed to 15 May 2024 at 15:15 for status hearing.</li><li>5. The parties shall file a joint status report on or before 8 May 2024.</li></ol>	
<b>Reasons for order:</b>  USIKU J:  <u>Introduction</u>	
[1] This is an exception raised by the plaintiff against the defendant's plea and counterclaim	

dated 22 November 2023, on the basis that the plea does not disclose a defence and is vague and embarrassing. The plaintiff also contends that the counterclaim does not disclose a cause of action. I should point out at the outset that the defendant is a lay litigant.

[2] In the main action, the plaintiff claims damages in the amount of N\$46 284,18 arising from a motor vehicle collision which occurred between the plaintiff's motor vehicle and a motor vehicle then being driven by the defendant. The plaintiff alleges that the collision was occasioned solely as a result of negligence of the defendant. The defendant entered an appearance to defend and filed a document purporting to be a plea on 30 August 2023. The plaintiff filed an exception to that plea. On 1 November 2023, the court upheld the exception on the basis that the plea does not disclose a defence and that it was vague and embarrassing. The court set aside the plea and granted the defendant leave to amend his plea if so advised.

[3] On 22 November 2023, the defendant filed a plea and counterclaim, which is the subject of the present exception.

#### Defendant's plea and counterclaim

[4] The defendant's plea contains two bare admissions, namely, an admission of the contents of para 2 of the particulars of claim which describes who the defendant is and his further particulars, and an admission of the contents of para 4, which states that the collision between the two vehicles occurred on 22 February 2023 on Hosea Kutako Drive, Windhoek. All other paras of the particulars of claim are met with bare denials. For example, para 1 of the particulars of claim describes who the plaintiff is, stating her name, gender and residential address. In the plea, the defendant responds thereto that, 'the contents of this paragraph is denied'. Paragraph 8 states that on 3 June 2023, a letter of demand was served on the defendant and that the letter of demand and return of service is attached to the particulars of claim as 'POC2' and 'POC3' respectively. The response in the plea is that, 'the contents of this paragraph is denied'.

[5] The defendant's counterclaim has only one sentence and simply states that the 'plaintiff should compensate me for the damages caused to my vehicle, because she risked by giving authority to a third person to drive her vehicle that is uninsured'.

#### Plaintiff's exception

[6] The plaintiff raises two grounds of exception. The first ground of exception is to the effect that the defendant has not complied with the requirements of rule 45(5), (6) and (9). Furthermore, the plaintiff contends that the defendant has not complied with the requirements of rule 46(2) and (3), and it is impossible for the plaintiff to replicate to the defendant's plea.

[7] The second ground of exception is that the defendant has not stated in his plea his response or defence to the allegations contained in paras 1 to 9 of the plaintiff's particulars of claim. Furthermore, the defendant has not made out a case for his counterclaim against the plaintiff.

#### Defendant's opposition to the exception

[8] The defendant opposes the exception, but does not address the merits of the plaintiff's exception. He instead attacks the plaintiff's claim as being vague and embarrassing and proceeded to address other issues not related to the exception.

#### Analysis

[9] It is trite that an exception is a legal objection to a pleading. The object is to cut the proceedings short and to weed out cases without legal merit.

[10] In the present matter, the plaintiff's first ground of objection is to the effect that the defendant's plea does not contain clear and concise statements of the material facts on which the defendant relies for his defence, with sufficient particularity to enable the plaintiff to reply thereto.

[11] In the present case, a number of paragraphs in the particulars of claim comprise several averments. To those several averments and supporting annexures, the defendant simply responded with a bare denial, rendering the plea ambiguous as to whether a specific averment is being pleaded to or whether all averments contained within the relevant paragraph are intended to be addressed by the bare denial.

[12] For example, paragraph 6 of the particulars of claim alleges that, as a result of the collision the plaintiff's vehicle was damaged and she suffered damages in the amount of

N\$46 284,18, being the fair and reasonable amount to repair the vehicle to its pre-collision condition, and that a tax invoice is attached to the particulars of claim. To those averments, the plea simply responds that 'all the contents of this paragraph is denied'. The plea does not provide particularity on why it is denied that the plaintiff's vehicle was damaged as a result of the collision, why it is denied that the plaintiff suffered damages, or why it is denied that the amount claimed is the fair and reasonable amount to repair the vehicle to its pre-collision condition. Furthermore, it is not clear why the defendant denies that a tax invoice is attached to the particulars of claim.

[13] I am therefore of the opinion that the defendant has failed to plead material facts upon which he relies for his defence with the requisite particularity to enable the plaintiff to respond thereto and know the case she must meet. I am also of the opinion that in the circumstances of this case, the plea fails to disclose a defence, alternatively is vague and embarrassing. The plea therefore falls to be set aside.

[14] In regard to the second ground of exception concerning the counterclaim, it is apparent that the counterclaim fails to comply with the fundamental principles of pleadings, namely that a pleading must contain sufficient material facts to enable the opposite party to understand the case against him in order to plead thereto and meet it.

[15] In the present case, the counterclaim contains a heading 'counterclaim' and contains a single sentence stating that the plaintiff should compensate the defendant for the damages caused to the defendant's vehicle, because the plaintiff took a risk by authorising a third party to drive her uninsured vehicle. The counterclaim does not contain a clear and concise statement of material facts on which the defendant relies for his claim, with sufficient particularity to enable the plaintiff to reply thereto. For example, the counterclaim does not set out a cause of action, and does not set out the damages he is claiming in such manner as will enable the plaintiff reasonably to assess the quantum thereof.

[16] In the circumstances, I am of the opinion that the counterclaim fails to disclose a cause of action against the plaintiff and falls to be set aside.

[17] In this matter, the plaintiff prays that the defendant has no possible defence and that his plea, counterclaim and defence be struck out and that the plaintiff's case be allowed to proceed undefended herein.

[18] The general principle is that, where an exception on the basis that the pleadings do not disclose a cause of action is upheld, the court should set aside the pleading (and not dismiss the action).<sup>1</sup> In the present matter, I am not persuaded that the facts now are such that the court should depart from the general principle. I shall therefore make an order compliant with the abovementioned principle.

[19] In regard to the issue of costs, the general rule is that costs follow the event. The plaintiff has been successful in its exception and is therefore entitled to costs.

[20] In the result, I make the following order:

1. The plaintiff's exception is upheld.
2. The defendant's plea and counterclaim are set aside and the defendant is granted leave to file an amended plea and / or counterclaim, if so advised within 15 days of this order.
3. The defendant is ordered to pay the plaintiff's costs occasioned by the exception.
4. The matter is postponed to 15 May 2024 at 15:15 for status hearing.
5. The parties shall file a joint status report on or before 8 May 2024.

<b>Judge's signature</b>	<b>Note to the parties:</b>
B Usiku Judge	Not applicable
<b>Counsel:</b>	
<b>Plaintiff:</b>	<b>Defendant:</b>
P Christians Of Kloppers Legal Practitioners, Windhoek	B Morwe (the defendant in-person) Windhoek

<sup>1</sup> *Total Namibia (Pty) Ltd v Van der Merwe* 1998 at 180C-D, see also *Hallie Investment v Caterplus* 2016 (1) NR 291 at 305H.