

REPUBLIC OF NAMIBIA

HIGH COURT OF NAMIBIA
RULING
PRACTICE DIRECTION 61



MAIN DIVISION, WINDHOEK

Case Title: FIRST NATIONAL BANK NAMIBIA LIMITED PLAINTIFF and PETRUS NUUKALA DEFENDANT	Case No: HC-MD-CIV-ACT-CON-2023/03957
	Division of Court: HIGH COURT (MAIN DIVISION)
Heard before: HONOURABLE MR JUSTICE PARKER, ACTING	Date of hearing: 3 APRIL 2024
	Delivered on: 24 APRIL 2024
Neutral citation: <i>First National Bank Namibia Limited v Nuukala CC</i> (HC-MD-CIV-ACT-CON-2023/03957) [2024] NAHCMD 189 (24 April 2024)	
IT IS ORDERED THAT: Summary judgment is granted in the following terms: CLAIM 1 1. Payment in the amount of N\$90 644,94; 2. Interest calculated on the aforesaid amount at the prime rate 11.50 per cent plus 4.50 per cent per annum and the interest is calculated on a daily basis and compounded monthly in arrears as from 26 July 2023 until date of full and final payment;	

3. Costs of suit on the scale as between counsel and own client.

CLAIM 2

4. Payment in the amount of N\$13 662,08;
5. Interest calculated on the aforesaid amount at the prime rate 11.50 per cent plus 4.50 per cent per annum and the interest is calculated on a daily basis and compounded monthly in arrears as from 29 July 2023 until date of full and final payment;
6. Costs of suit on the scale as between counsel and own client.

CLAIM 3

7. Payment of the amount of N\$12 697,29 together with interest accrued thereon;
8. Interest calculated on the aforesaid amount at the prime rate 11.50 per cent and the interest is calculated on a daily basis and compounded monthly in arrears as from 28 July 2023 until date of full and final payment;
9. Costs of suit on the scale as between party and party.
10. The matter is finalised and removed from the roll.

Following below are the reasons for the above order:

PARKER AJ:

[1] This is an application for summary judgment. Mr Linde represents the plaintiff. The defendant now represents himself. As the defendant acknowledges, 'the defendant was granted more time to acquire legal representation. The defendant at this point still has not acquired a legal representative'.

[2] In order not to saddle the plaintiff with unnecessary costs that will be to the plaintiff's prejudice, the court was not prepared to wait indefinitely to adjudicate upon the dispute. Consequently, pursuant to the court's order of 26 January 2024 made during a hearing at which the defendant was in attendance in person, the court ordered that the defendant would have to proceed in person, if he did not obtain legal representation.

[3] The defendant did not file an answering affidavit in opposition to the plaintiff's founding affidavit and no proper condonation application was brought to condone the defendant's failure to comply with the court order to file an answering affidavit. What the defendant has done is to file a 'defendant's status report' in the defendant's attempt to resist summary judgment. Be that as it may, upon the authority of *Kamwi v Standard Bank Namibia Ltd*,¹ I decided to consider the substance of the said status report and the heads of argument.

[4] The defendant failed to appear in court, without explanation or justification, to make oral submissions. I could not stop the train of justice from rolling on for the defendant to board at his whims and caprices. To do so would amount to undermining due administration of justice and the rule of law. In any case, justice means justice to all parties. As I have said, the defendant was aware of the set-down date for the hearing of the application and yet he chose not to appear.

[5] In the circumstances, I allowed Mr Linde to move the plaintiff's application. Mr Linde also filed heads of argument.

[6] It is trite that the purpose of an order in terms of rule 60 of the rules of court is to enable a plaintiff to obtain summary judgment swiftly without trial, if the plaintiff has a clear case and if the defendant is unable to set up a bona fide defence which is good in law or raise an issue against the claim which ought to be tried.²

[7] In order to resist summary judgment, the defendant bears the onus of satisfying the court that he or she has set up a bona fide defence which is good in law or that he or she has raised an issue and ground of the defence and the material facts upon which that defence is founded. In the sense that there need to be factual material placed before the court sufficiently placing in doubt

¹ *Kamwi v Standard Bank Namibia Ltd* 2020 (4) NR 1038 (SC).

² *Namibia Wildlife Resorts v Maxuilili-Ankama* [2023] NAHCMD 94 (7 March 2023).

that the plaintiff's claim is unanswerable.³

[8] I find that the defendant does not deny his indebtedness to the plaintiff in the amount claimed in the particulars of claim. Indeed, the defendant sought to negotiate a repayment of the debt with the plaintiff. Pursuant to that, the plaintiff furnished the defendant with a draft settlement agreement for his consideration, but the defendant has not signalled his intention to accept it, as Mr Linde submitted.

[9] In his papers, the defendant blames others, including the plaintiff and other creditors of the defendant, but himself for his indebtedness to the plaintiff and other creditors. But it should be stressed, that does not satisfy the requisites he must establish in order to resist summary judgment.⁴

[10] In peroration, I hold that the defendant has not placed any factual material before the court to establish that he has a bona fide defence which is good in law; neither has he raised a triable issue and thus, 'sufficiently placing in doubt that the plaintiff's claim is unanswerable'.⁵ Consequently, I hold that the defendant has failed to resist the summary judgment sought by the plaintiff.

[11] Based on these reasons, I find and hold that the plaintiff has made out a case for the relief sought and is, therefore, entitled to judgment.

Judge's signature:	Note to the parties:
	Not applicable.
Counsel:	
PLAINTIFF	DEFENDANT
R Linde of	No appearance

³ *Radial Truss Industries (Pty) Ltd v Aquatan (Pty) Ltd* [2019] NASC (10 April 2019) para 37.

⁴ See paras [6] and [7] above.

⁵ *Radial Truss Industries (Pty) Ltd v Aquatan (Pty) Ltd* footnote 3 loc cit.

Theunissen, Louw & Partners, Windhoek	
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