

REPUBLIC OF NAMIBIA

HIGH COURT OF NAMIBIA  
RULING  
PRACTICE DIRECTION 61



MAIN DIVISION, WINDHOEK

<b>Case Title:</b>  FIRST NATIONAL BANK OF NAMIBIA LIMITED PLAINTIFF  and  BLACK SQUARE AUTO GARAGE CC FIRST DEFENDANT DOMINIKUS SHIVUTE SECOND DEFENDANT	<b>Case No:</b> HC-MD-CIV-ACT-CON- 2023/04116
	<b>Division of Court:</b> HIGH COURT (MAIN DIVISION)
<b>Heard before:</b> HONOURABLE MR JUSTICE PARKER, ACTING	<b>Date of hearing:</b> 17 APRIL 2024
	<b>Delivered on:</b> 15 MAY 2024
<b>Neutral citation:</b> <i>First National Bank of Namibia Limited v Black Square Auto Garage CC</i> (HC-MD-CIV-ACT-CON-2023/04116) [2024] NAHCMD 227 (15 May 2024)	
<b>IT IS ORDERED THAT:</b>  Summary judgment is granted in the following terms:  1. Payment of the outstanding amount on the loan facility in the amount of N\$129, 730.91.  2. Interest on the aforesaid amount at the rate of prime (currently 11.50 per cent) plus 4 per cent per annum as from 5 July 2023 until date of full and final payment.	

3. Costs of suit on the scale as between attorney(legal practitioner) and own client.
4. The matter is finalised and removed from the roll.

**Following below are the reasons for the above order:**

PARKER AJ:

[1] In the instant application for summary judgment, Mr Esau represents the plaintiff (the applicant in this application). The claim is based on the defendant's failure or refusal to repay outstanding amounts on a loan facility that the plaintiff extended to the defendant, plus interest on the amount and costs of suit.

[2] The defendant failed or refused to appear for the hearing in person or by counsel. In terms of the notice of motion filed on 25 March 2024, the defendants became aware of the plaintiff's application for summary judgment. And through the parties' joint status report filed on 12 April 2024 the defendants became aware that such application had been filed but failed or refused to file their answering affidavit thereto.

[3] Furthermore, I am satisfied that the defendants were aware of the instant proceedings but failed to appear, as aforesaid, without justification or explanation. I could not prevent the plaintiff's counsel from moving the application without undermining the due administration of justice or the rule of law.

[4] 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.<sup>1</sup> Thus, 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 grounds of defence and the material facts upon which that defence is founded; in the sense that there need to be factual material placed before

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<sup>1</sup> *Namibia Wildlife Resorts v Maxuilili-Ankama* [2023] NAHCMD 94 (7 March 2023).

the court sufficiently placing in doubt that the plaintiff's claim is unanswerable.<sup>2</sup>

[5] I find that the defendants have not placed any factual material before the court to establish that they have a bona fide defence which is good in law; neither have they raised a triable issue and thus, sufficiently placing in doubt that the 'plaintiff's claim is unanswerable'.<sup>3</sup> Consequently, I hold that the defendant has failed to resist the summary judgment sought by the plaintiff. Accordingly, I conclude that the plaintiff has made out a case for the relief sought and is, therefore, entitled to judgment.

<b>Judge's signature:</b>	<b>Note to the parties:</b>
	Not applicable.
<b>Counsel:</b>	
<b>PLAINTIFF</b>	<b>DEFENDANT</b>
D Esau of Anne Shilengudwa Incorporated, Windhoek	<b>No appearance</b> Isaacks & Associates Inc., Windhoek

<sup>2</sup> *Radial Truss Industries (Pty) Ltd v Aquatan (Pty) Ltd* [2019] NASC (10 April 2019) para 37.

<sup>3</sup> Loc cit.