

REPUBLIC OF NAMIBIA



IN THE HIGH COURT OF NAMIBIA, MAIN DIVISION, WINDHOEK

RULING

PRACTICE DIRECTIVE 61

Case Title: NGURIMUJE MERVIN TJIRAMBA PLAINTIFF and THE COUNCIL OF THE 1 ST DEFENDANT THE MUNICIPALITY OF WINDHOEK ELIAS EIXAB 2 ND DEFENDANT	Case No: HC-MD-CIV-ACT-OTH-2022/01055 Division of Court: HIGH COURT (MAIN DIVISION)
Heard before: Honourable Mr Justice Miller AJ	Date of hearing: 04 April 2024 Delivered on: 08 May 2024 Released on: 16 May 2024
Neutral citation: <i>Tjiramba v The Council of the Municipality of Windhoek</i> (HC-MD-CIV-ACT-OTH-2022/01055) [2024] NAHCMD 232 (16 May 2024)	
IT IS ORDERED THAT: 1. The first and second Defendants are ordered jointly and severally, the one paying the other to be absolved, to pay the Plaintiff the sum of N\$ 400 000 (Four hundred thousand	

Namibian Dollars).

2. The matter is removed from the roll and regarded as finalised.

Reasons for the Order:

MILLER AJ:

[1] On 11 March 2022, the plaintiff instituted a delictual action against the defendants arising from damages caused as a result of an alleged assault. The matter became defended and proceeded to the pre-trial process. Eventually the trial was scheduled to commence on 23 October 2023. As it is customary in this jurisdiction, the parties attended a roll call hearing on 20 October 2023 for the allocation of the trial to the judge.

[2] Both the plaintiff and defendants were represented by their respective legal practitioners when they appeared before the court on that particular day. The legal practitioners informed the presiding judge that the matter between the parties had become settled.

[3] The relevant facts from the settlement agreement are the following. On 26 September 2023, sometime before the trial was to commence, the defendants' legal practitioner informed the plaintiff's legal practitioner that the defendants have instructed them to negotiate a settlement. There was some debate about the content of the claim, however, on 17 of October 2023 the defendants' legal practitioner advised the plaintiff's legal practitioner in writing, that the defendants were prepared to settle the matter by means of payment to the plaintiff in the sum of N\$ 400 000 in full and final settlement of his claim, including costs.

[4] The plaintiff's legal practitioner thereupon drafted a document containing the essential details of the settlement which he forwarded to the defendants' legal practitioner for signature as the plaintiff had already signed it. The 1st defendant failed and or refused to sign the agreement.

[5] The first question in this matter is whether the matter has in fact become subject of an oral agreement concluded between the parties. As was held by my brother Parker AJ in the matter of *DM v SM*¹, "Oral agreement made seriously and deliberately with intention that lawful

obligation should be established and having well-grounded reason for its conclusion which was not immoral or forbidden, was valid and enforceable.” I need also refer to the matter of *Goldplatt v Freemantle*² where his Lordship Justice Innes CJ stated the following, and I quote “[I]f during negotiations mention is made of a written contract, the court will assume that the object was merely to afford facility of proof of the verbal agreement.”

[6] In my view, the fact that the written document is not signed by both parties does not take away the fact that there was an oral agreement between the parties to settle the matter on the terms that they had agreed on.

[5] I therefore find that the matter between the parties has become settled and I issue the following order:

1. The first and second Defendants are ordered jointly and severally, the one paying the other to be absolved, to pay the Plaintiff the sum of N\$ 400 000 (Four hundred thousand Namibian Dollars)
2. The matter is removed from the roll and regarded as finalised.

Judge’s signature	Note to the parties:
	Not applicable.
Counsel:	
Plaintiff	Defendants
F BANGAMWAMBO Of FB LAW CHAMBERS, Windhoek	No appearance

¹ *DM v SM* 2014 (4) NR 1074 (HC) at 1074F.

² *Goldblatt v Fremantle* 1920 AD 123 at 128-129.