

REPUBLIC OF NAMIBIA



IN THE HIGH COURT OF NAMIBIA, MAIN DIVISION, WINDHOEK

RULING

Case no: HC-MD-CIV-ACT-DEL-2020/00197
HC-MD-CIV-ACT-DEL-2019/04761

In the matter between:

| | |
|-------------------------------------|---------------------------------|
| HELLMUT GOTTLOB VON LUDWIGER | 1ST PLAINTIFF |
| ANRI PARKER | 2ND PLAINTIFF |
| MARKUS JOHANNES LUBBE | 3RD PLAINTIFF |
| SIRK BERNARDUS KRÛGEL | 4TH PLAINTIFF |
| FRAUKE RÔESCHLAU | 5TH PLAINTIFF |
| HERKLAAS VILJOEN | 6TH PLAINTIFF |
| PETER KEIL | 7TH PLAINTIFF |
| CLAIRE HOBBS | 8TH PLAINTIFF |
| ANDRE DE JAGER | 9TH PLAINTIFF |

and

| | |
|-----------------------------|---------------------------------|
| CEDRIC VOS NIEUWOUDT | 1ST DEFENDANT |
| KARIN NIEUWOUDT | 2ND DEFENDANT |

Neutral Citation: *Von Ludwiger v Vos Nieuwoudt* (HC-MD-CIV-ACT-DEL-2020/00197) [2024] NAHCMD 296 (7 June 2024)

Coram: OOSTHUIZEN J

Heard: 12 April 2023

Delivered: 7 June 2024

ORDER

IT IS ORDERED THAT:

1. The application for joinder is granted.
2. The Registrar of Deeds, the Minister of Urban and Rural Development and the Municipal Council for the City of Windhoek are hereby joined as the Third, Fourth and Fifth Defendants in the consolidated action.
3. Costs of the joinder application shall be costs in the cause.
4. The plaintiffs are directed to serve a copy of this order together with the amended pleadings filed on the Third to the Fifth defendants respectively within 10 (ten) days from the date of this order.
5. Additional witness statements may be filed on the issue whether the Windhoek Town Planning Scheme or the Kappsfarm Town Planning Scheme applies to the first and second defendants' property.
6. Such additional witness statements, if any, by the plaintiffs and first and second defendants, shall be filed on or before 28 June 2024.
7. The parties (inclusive of the third to fifth defendants if they elect to participate in the proceedings) shall file a joint case management report on or before 18 July 2024.
8. The case is postponed to 22 July 2024 at 11h30 at SADC court, for a Case Management Conference.

REASONS

OOSTHUIZEN J:

Background

[1] As can be seen from the case numbers in this consolidated case, they originated in 2019 and 2020. They were consolidated on 8 February 2021.

[2] On 22 August 2023 the defendants filed their amended plea and counterclaim.

[3] In the amended counterclaim the defendants rely on the deed of transfer of defendants' property in the Finkenstein Estate saying that the Windhoek Town Planning Scheme is applicable to their immovable property.

[4] The plaintiff's plea to the amended counterclaim allege that insofar as the aforesaid deed of transfer and the notorial deed of impositions of conditions registered against all the property in the Finkenstein Estate may state that the Windhoek Town Planning Scheme applies to the property, it is wrong and/or a mistake. Plaintiffs plead that the Kapps Farm Town Planning Scheme applies to the defendants' property.

[5] The defendants amended counterclaim for *inter alia* 18 million dollars as consequential losses suffered is premised on defendants' allegation that the plaintiffs unlawfully frustrated the sale of defendants' property by informing estate agents that defendants operated an illegal bed and breakfast facility. Defendants' case is that they operated a lawful facility for which they had lawful consent (under the Windhoek Town Planning Scheme). The plaintiffs (according to defendants) caused the consent to be revoked unlawfully, wrongfully and without authority.

[6] The applicable town planning scheme according to the plaintiffs, is pivotal to the losses allegedly suffered.

[7] The plaintiffs allege that the defendants belatedly changed front concerning the applicable town planning scheme and therefore it is necessary for them to apply for the joinder of the Registrar of Deeds, the Minister of Urban and Rural Development and the Municipal Council for the City of Windhoek, who may have a legal interest in any order the court may make concerning the registration regime of the defendants immovable property.

[8] The counsel representing the parties submitted helpful arguments on the issue of joinder.

[9] I am of the view that convenience and the interests of justice require me to exercise my discretion in favour of plaintiffs and to order a joinder of the Registrar of Deeds, the Minister of Urban and Rural Development and the Municipal Council for the City of Windhoek.¹

[10] Despite the plaintiffs' strong view concerning costs in respect of the opposition to the joinder application, the costs should be costs in the cause.

[11] The defendants argue that no directions were sought in terms of rule 40(5). I disagree. The e-justice filings evidence such directions from September 2023 onwards. The parties sought to be joined were also served with the Notice of Motion and obviously elected not to participate in the joinder application.

[12] In the result the following orders are made:

1. The application for joinder is granted.
2. The registrar of Deeds the Minister of Urban and Rural Development and the Municipal Council for the City of Windhoek are hereby joined as the Third, Fourth and Fifth Defendants in the consolidated action.
3. Costs of the joinder application shall be costs in the cause.

¹ See *Martin v Diroyal Motors Namibia* 2013 (2) NR 463 (HC) paras [23] to [26].

4. The plaintiffs are directed to serve a copy of this order together with the amended pleadings filed on the Third to the Fifth defendants respectively within 10 (ten) days from the date of this order.
5. Additional witness statements may be filed on the issue whether the Windhoek Town Planning Scheme or the Kappsfarm Town Planning Scheme applies to the first and second defendants' property.
6. Such additional witness statements, if any, by the plaintiffs and first and second defendants, shall be filed on or before 28 June 2024.
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8. The case is postponed to 22 July 2024 at 11h30 at SADC court, for a Case Management Conference.

G H OOSTHUIZEN
Judge

APPEARANCE

Plaintiffs: J Marais, SC (with her Y Campbell)
Instructed by Fisher, Quarmby & Pfeifer, Windhoek

Defendants: J Diedericks
Instructed by PD Theron & Associates, Windhoek