

REPUBLIC OF NAMIBIA

IN THE HIGH COURT OF  
WINDHOEK



NAMIBIA, MAIN DIVISION,

PRACTICE DIRECTION 61

RULING

<b>Case Title:</b> Safari Investments (Namibia) (Pty) Ltd                      Plaintiff  and  Streethouse Entertainment                                      Defendant Swakopmund (Pty) Ltd T/A Street House Entertainment	<b>Case No:</b> HC-MD-CIV-ACT-CON-2023/04623
	<b>Division of Court:</b> HIGH COURT (MAIN DIVISION)
<b>Heard before:</b> Honourable Justice Miller AJ	<b>Date of hearing:</b> 22 May 2024
	<b>Delivered on:</b> 14 June 2024
<b>Neutral citation:</b> <i>Safari Investments (Namibia) (Pty) Ltd v Streethouse Entertainment Swakopmund (Pty) Ltd T/A Street House Entertainment</i> (HC-MD-CIV-ACT-CON-2023/04623) [2024] NAHCMD 320 (14 June 2024)	
<b>IT IS ORDERED THAT:</b>  1. The application for summary judgment is refused.  2. The defendant is granted leave to defend the action.  3. The costs of the application shall be costs in the cause.  4. The matter is postponed to 27 June 2024 for Case Planning Conference. The parties must file a joint case plan on or before 24 June 2024.	

**Reasons for the Order:**

MILLER AJ:

Introduction

[1] On or about 18 August 2017, the plaintiff and the defendant concluded a written agreement of lease. In terms of the lease agreement, the defendant leased certain business premises from the plaintiff.

[2] The initial agreement was by agreement extended from time to time. The defendant vacated the leased premises during August 2023.

[3] The plaintiff alleges that the defendant in breach of the agreement, failed to honour its obligations to pay the amounts due in rental when the amounts became due and payable, and in the amounts agreed upon. As a result thereof, the defendant is indebted to the plaintiff in the sum of N\$ 508 891, 70 as at October 2023.

[4] The plaintiff instituted action against the defendant claiming payment of the amount of N\$ 508 891, 70 together with interest on that amount and costs.

[5] The defendant entered an appearance to defend the action, whereupon the plaintiff now applies for summary judgment. The defendant opposed the application and filed an opposing affidavit, which was deposed to by Roland Donovan Jacobs who describes himself as a director of the defendant.

[6] The defendant raises an issue that the written documents relied upon by the plaintiff were not stamped in terms of the Stamp Duties Act 15 of 1993. Consequently, it was submitted that plaintiff's particulars of claim is materially defective. Two further issues were raised. The first issue relates to an alleged deposit in the sum of N\$ 203 400 which was paid by the defendant at the inception of the agreement, and which remains unpaid. Secondly, the defendant takes issue with the plaintiff's allegation regarding the amount claimed.

[7] In considering the opposing views expressed by counsel during the course of the hearing,

I need to consider the basic underlying principle applicable to matters of this kind. The relevant principles are the following:

7.1 By its nature, summary judgment is a drastic remedy.

7.2 If it appears upon a consideration of the pleadings or other papers that the defendant raises a bona fide defence to the claim either in whole or in part, that the defendant may raise a bona fide counterclaim, the court will in the exercise of its discretion refuse to enter summary judgment.

[8] In *Di Savino v Nedbank Namibia Limited*<sup>1</sup> the court stated that:

‘While the defendant is not required to deal “exhaustively with the facts and the evidence relied upon to substantiate them”, the defendant must at least disclose the defence to be raised and the material facts upon which it is based “with sufficient particularity and completeness to enable the Court to decide whether the affidavit discloses a *bona fide* defence.”

[9] I also bear in mind the following passage at paragraph 28:

‘This approach to the opposing affidavit in summary judgment is a recognition of the drastic nature of the remedy of summary judgment. It offends against the fundamental right of a litigant to have access to court and be heard. Its aim is to protect the plaintiff against a defendant who has no *bona fide* defence and who has entered appearance to defend to delay the recovery of the debt...’

[10] Upon due consideration of the principles when applied to the particular facts of the present case, it appears to me that the defences raised by the defendant are not mere mechanisms contrived to delay the payment of the debt, but instead seek to bona fide dispute the amount of the indebtedness, if any, to the plaintiff.

[11] In the circumstances, the proper path to follow will be to allow the parties to ventilate their dispute properly during the course of a trial.

### Order

[12] I accordingly, make the following order:

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<sup>1</sup> *Di Savino v Nedbank Namibia Ltd* 2012 (2) NR 507 (SC) para 25.

1. The application for summary judgment is refused.
2. The defendant is granted leave to defend the action.
3. The costs of the application shall be costs in the cause.
4. The matter is postponed to 27 June 2024 for Case Planning Conference. The parties must file a joint case plan on or before 24 June 2024.

<b>Judge's signature</b>	<b>Note to the parties:</b>
	Not applicable.
<b>Counsel:</b>	
<b>Plaintiff</b>	<b>Defendant</b>
D Quickfall Instructed by Morland Incorporated Windhoek	A Naude Of Dr Weder, Kauta & Hoveka Inc Windhoek