

REPUBLIC OF NAMIBIA



HIGH COURT OF NAMIBIA MAIN DIVISION, WINDHOEK

EX TEMPORE JUDGMENT

Case no: HC-MD-CIV-ACT-CON-2023/04479

In the matter between:

FIRST NATIONAL BANK OF NAMIBIA LIMITED

PLAINTIFF

and

ALVIN VAN WYK

DEFENDANT

Neutral citation: *First National Bank of Namibia Limited v Van Wyk* (HC-MD-CIV-ACT-CON-2023/04479) [2024] NAHCMD 92 (8 March 2024)

Coram: SIBEYA J

Heard on: 6 December 2023

Delivered: 6 December 2023

Reasons: 8 March 2024

ORDER

Summary judgment is granted in favour of the plaintiff against the defendant for:

1. Payment in the amount of N\$105 987.45.
 2. Interest on the outstanding amount at Prime rate currently at 10.75 percent plus 6 percent per annum as from 08 April 2023 until date of final payment, calculated on a daily balance and compounded monthly in arrears.
 3. Cost on an attorney and own client scale, as agreed.
 4. The matter is removed from the roll: Case Finalised.
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EX TEMPORE JUDGMENT

Sibeya J:

Introduction

[1] This is an application by the plaintiff against the defendant for summary judgment. The plaintiff is represented by Ms Gaes while the defendant is not present in court on 6 December 2013 at 09:00.

Findings

[2] The defendant is not before court on 6 December 2023. He was however in court on 2 November 2023, when this matter was postponed to 6 December 2023 at 9 o'clock for hearing of the summary judgment application. The parties were put to terms on the documents to be filed. This also required that the defendant must file

the opposing affidavit which he did, and he must therefore have been aware that this matter is appearing at 9 o'clock in the morning, on 6 December 2023.

[3] Furthermore, in the opposing affidavit which the defendant filed, at the top of the affidavit, he depicts that the matter is set down for summary judgment hearing on 6 December 2023 at 9 o'clock. Over and above that, the parties filed their joint status report dated 4 December 2023 which also refers to the matter being set down for hearing on 6 December 2023.

[4] Therefore, well knowing that this matter was to appear in court for an application for summary judgment, at 9 o'clock on 6 December 2023, the defendant is not before court. I order that the matter proceeds with the hearing.

[5] The defendant stated in the opposing affidavit that he can pay the claim in the amount of N\$100 000 and not interest and costs. I do not see any defence to the claim in the opposing affidavit and I, therefore hold that there is no *bona fide* defence raised to the plaintiff's claim.

[6] I make the following order that, notwithstanding the non-appearance of the defendant, I have considered his opposing affidavit and I find that there is no *bona fide* defence revealed in this opposing affidavit.

[7] As a result, and for reasons stated earlier, it is apparent in my view that the defence was simply added for purposes of delay and summary judgment ought to be given.

[8] Summary judgment is granted in favour of the plaintiff against the defendant for:

1. Payment in the amount of N\$105 987.45.
2. Interest on the outstanding amount at Prime rate currently at 10.75 percent plus 6 percent per annum as from 08 April 2023 until date of final payment, calculated on a daily balance and compounded monthly in arrears.

3. Cost on an attorney and own client scale, as agreed.
4. The matter is removed from the roll: Case Finalised.

O Sibeya
Judge

APPEARANCES

PLANTIFF: J Gaes
Of Anne Shilengudwa Incorporated, Windhoek

DEFENDANTS: No appearance