

**REPUBLIC OF NAMIBIA**



**HIGH COURT OF NAMIBIA, MAIN DIVISION, WINDHOEK**  
**JUDGMENT**

Case no: HC-MD-CIV-ACT-CON-2023/05152

In the matter between:

**NAMIBIAN AGRONOMIC BOARD**

**PLAINTIFF**

and

**DOUGLASCHICKS INVESTMENT CC**

**DEFENDANT**

**Neutral Citation:** *Namibian Agronomic Board v Douglaschicks Investment CC*  
(HC-MD-CIV-ACT-CON-2023/05152) [2025] NAHCMD 37 (12  
February 2025)

**Coram:** MASUKU J

**Heard:** **Decided on papers**

**Delivered:** **12 February 2025**

**Flynote:** Civil Action – Claim for outstanding levies due in terms of the Agronomic Industries Act 20 of 1992 ('the Act') – Whether the plaintiff made a case for the payment of levies due under the Act – The need to present clear and concise relief prayed for in particulars of claim.

**Summary:** The plaintiff sued the defendant for payment of N\$117 189, 53, in respect of levies allegedly due from the defendant to the plaintiff in terms of the provisions of the Act. The plaintiff claimed that from information at its disposal, the defendant sold for its benefit some controlled products as stipulated in the Act but neglected to pay the levies due.

*Held:* that the plaintiff had placed proof to the court that the defendant had been served with the particulars of claim and that despite such service, the defendant had not defended the proceedings. This should therefor result, all things being equal, in the court granting the relief sought, as prayed.

*Held that:* there is sufficient evidence to prove that the defendant did sell for its benefit, products that were subject to a levy in terms of the Act but did not pay the levy due in terms of the Act.

*Held further that:* the plaintiff, is entitled, in terms of the relevant Government Gazette, entitled to claim the levy as it was authorised by the responsible Minister to collect the levies due in terms of the Act.

*Held:* that the prayer for payment of an unspecified amount for levies and in respect of an unspecified period, cannot be granted because there is inexactitude in the particulars necessary for the court to grant the relief sought.

Relief sought otherwise granted, save the imprecise relief sought in relation to the unspecified period.

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**ORDER**

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1. The defendant must pay N\$117 189, 53 in respect of unpaid levies to the plaintiff.

2. The defendant must pay interest to the plaintiff at 20 percent per annum *a tempore morae* from the date of judgment to the date of final payment.
3. The defendant must pay the plaintiff's costs.
4. The matter is removed from the roll and is regarded as finalised.

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## JUDGMENT

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MASUKU, J:

### Introduction

[1] This is a matter that served before me on the default judgment roll of 27 September 2024. I accordingly raised some queries with the plaintiff's legal practitioner of record. This necessitated that the plaintiff's legal practitioners to file brief heads of argument on the issues raised by the court, to assist the court in coming to a determination on the sustainability of the plaintiff's claim. The plaintiff was to file the said heads of argument by 25 October 2024 and the matter was postponed to 1 November 2024.

[2] The heads of argument were duly filed by the plaintiff and for which the court expresses its gratitude. The court indicated that it would decide the matter on the papers filed and did not need to be addressed on the plaintiff's behalf on the issues arising. Due to the heavy rolls, however, towards the end of the year, the matter, regrettably fell through the cracks resulting in the court not rendering a decision on the sustainability or otherwise of the plaintiff's claim. I unreservedly apologise to the plaintiff for the delay. I set out the court's reasoning and order below.

### Background

[3] This is an undefended matter in which the plaintiff, the Namibian Agronomic Board, a body corporate, established in terms of s 3 of the Agronomic Industry Act 20 of 1992, sued the defendant, Douglaschicks CC, a close corporation with its place of

business situate at Erf no 5900, Samuel Shikomba Street, Windhoek for payment of N\$117 189,53. This amount was allegedly due to the plaintiff as levies imposed in pursuance of the provisions of s 18(2)(e) of the Agronomic Industry Act 20 of 1992, ('the Act'), read with the provisions of para 6 of Government Notice No 147 of 2002.

[4] It is common cause that the defendant was served with the process and did not, within the time stipulated, defend the proceedings. This fact entitled the plaintiff to approach this court for a judgment by default. The matter served for judgment by default on 15 March 2024 before De Jager J. After considering the papers, the learned judge held that the plaintiff had failed to establish a cause of action for payment of the alleged outstanding levies from November 2023 to the date of judgment and for interest from 17 November 2023 on the entire amount. The learned judge further found that in the statement annexed to the particulars of claim, some debits were only passed after 17 November 2022. She further found that no allegation was made as to when the levies were payable other than the general allegation that they became payable as of 17 November 2022.

[5] Having been made wise by the observations recorded above in the court order, the plaintiff opted to file an amended set of particulars of claim. These particulars of claim were again served on the defendant on 26 June 2024, together with some annexures thereto. Again, the defendant did not file a notice of intention to defend, thus, entitling the plaintiff to again move for judgment by default. The matter served before me on 17 September 2024 on which day I raised certain queries with the plaintiff's legal practitioner.

[6] On that day, I particularly raised issue with the question whether the amended particulars of claim, complied with the provisions of s 18(4) of the Act, read with the provisions of Government Gazette dated 14 December 2014. These issues were put to the plaintiff, and it was requested to file written submissions which the court would consider in coming to a decision as to whether the plaintiff's claim has any merit. This is the task the court is seized with in this brief ruling.

### The amended particulars of claim

[7] The plaintiff makes the following averrals in its amended particulars of claim, that it claims entitle it to the relief it seeks:

- (a) that on 22 February 2022, in Windhoek, the defendant, duly represented, and the plaintiff, also duly represented, registered the defendant as a horticulture trader in terms of s 10(k) of the Act;
- (b) the defendant sold, for its benefit, controlled products, namely, fresh fruit and vegetables, these being agronomic crops as defined in an annexure of Government Gazette No 147 of 2002; (the Gazette)
- (c) the plaintiff received source documents from either border or producers and invoiced levies to the defendant's account;
- (d) the plaintiff collects levies in terms of s 18(2)(e) of the Act, as read with para 6 of which mandates traders, processors and producers to pay levies, which are stipulated in the Gazette. These levies are payable with effect from 30 August 2002 to the plaintiff;
- (e) as from 17 November 2022, the defendant failed or neglected to pay accumulated levies to the plaintiff in terms of the Act and is thus in default of its statutory obligations;
- (f) despite demand, the defendant has failed or refused to pay the accumulated levies which amount to N\$117 189,53.

[8] In respect of the relief sought, the plaintiff claims:

- 'a) Payment in the amount of N\$117 189, 53 (One Hundred and Seventeen Thousand One Hundred and Eighty Nine Namibia Dollars and Fifty Three Cents;
- b) Payment of outstanding levies from November 2022 till the date of full and final payment.
- c) Interest at 20% per annum as from the date of judgment until the date of full and final settlement;
- d) Costs of suit;
- e) Further ad/alternative relief.'

[9] It now becomes necessary to consider the provisions upon which the plaintiff relies for the relief it seeks. The relevant provisions are s 18 of the Act. They provide the following:

'(1) The Minister may from time to time on the recommendation of the Board and by notice in the *Gazette*, impose a general or special levy on a controlled product or category of controlled products.

(2) The notice imposing the levy shall specify –

- (a) the controlled product or category of controlled products to which the levy applies;
- (b) the rate of levy payable;
- (c) the persons obliged to pay the levy;
- (d) the date with effect from which the levy is due;
- (e) the person or body appointed as agent to collect the levy on behalf of the Board; and
- (f) in the case of a special levy, the purpose for which it is imposed.

(3) The Minister may by notice, in the *Gazette* abolish a levy or change of rate of levy payable under this section.

(4) Whenever a levy under this section is paid by one person on behalf of another, the Board shall pay to the first mentioned person a prescribed commission in respect of the payment, and the person so paying may recover the amount of levy in the prescribed manner from that other person.'

[10] Schedule 1 and 6 of the Government Gazette in question, on the other hand, state the following:

' 1. Any person who produces and sells, excluding exports, for his, her or its benefit any controlled product, being agronomic crops, set out in the Annexure to this Schedule shall pay a general horticultural levy of one comma two percent (1,2%) on the selling price of the controlled product concerned.

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(6) The levy referred to in paragraphs 1 and 2 shall be collected by the Board.'

[11] In this matter, there is no dispute that the defendant either produced or sold controlled products in the instant matter. According to the particulars of claim, these controlled products were fruit and vegetables, which fall within the bracket of

controlled products. There is also no dispute that the said products are subject to the levy stated in para 1 of the Gazette above. There is further no dispute about the fact that the Board is the entity designated by the Minister in para 6 of the Gazette quoted above, to collect the levies due. It thus does have the *locus standi* to launch these proceedings.

[12] It accordingly seems to me that the plaintiff is, subject to what I say below, entitled to the relief it seeks. I am of the considered view that it has made out a case for the payment of the amount claimed, namely N\$117 189,53. I do however, have difficulty with granting prayer 2, namely, payment of outstanding levies from November 2022 till the date of full and final payment. The difficulty stems from the fact that these levies alleged to be due, are not computed. The court, if it were persuaded to grant these alleged outstanding levies, does not have any figure stated and a computation of how the figure claimed was arrived at.

[13] The court must be especially vigilant in cases such as the present, where the defendant, is not before court to place his case or objections to the court. The fact that the other party is not before court and is also not represented in the proceedings, despite service of the papers, does not in any manner, shape or form serve to relieve the court from its duty to ensure that the papers placed before it and on the basis of which it is moved to grant an order, are technically correct and contain all necessary allegations.

[14] I am also not certain whether the amount claimed in (b) does in fact differ from the amount set out in para (a). It may well be that the claim in (b) is merely a regurgitation of the claim in (a). If it is, it appears to be tautologous and should be refused. The court is not amenable to granting orders which, as prayer (b) is, are accompanied by an element of inexactitude. Where relief is sought from the court, it must be clearly articulated. If it is a sum of money claimed, it must also be clearly stated to the minute detail of the dollar and cent. The court cannot, in good conscience, grant a nebulous order such as that claimed by the plaintiff in para (b).

[15] That being the case, I am of the considered opinion that the plaintiff has made out a case for the relief set out in prayers (a), (c), and (d) of its particulars of claim. I accordingly grant the following order:

1. The defendant must pay N\$117 189, 53 in unpaid levies to the plaintiff.
2. The defendant must pay interest to the plaintiff at 20 percent per annum *a tempore morae* from the date of judgment to the date of final payment.
3. The defendant must pay the plaintiff's costs.
4. The matter is removed from the roll and is regarded as finalised.

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T S MASUKU

Judge



APPEARANCES

PLAINTIFF: N Uugwanga  
Of Shikongo Law Chambers, Windhoek