



IN THE HIGH COURT OF NAMIBIA, NORTHERN LOCAL DIVISION

RULING

Case no: I 63/2012

In the matter between:

VINASIU ALFRED N.O

PLAINTIFF/RESPONDENT

and

LUKAS HAIKALI

DEFENDANT/APPLICANT

Neutral citation: *Alfred N.O v Haikali* (I 63/2012) [2013] NAHCNLD 45 (24 April 2013)

Coram: DAMASEB, JP

Heard: 07 August 2013

Delivered: 07 August 2013

RULING

DAMASEB, JP:

[1] Defendant's special plea in relation to the alternative relief, in so far as it postulated that the court has no jurisdiction because the 'cause of action' arose in Angola – a foreign jurisdiction – has no basis in law as the court has jurisdiction based on defendant's presence in its jurisdiction. The court ordinarily assumes jurisdiction in

respect of claims sounding in money 'either when the defendant is an *incola*... or where the cause of action arose within its jurisdiction'.¹

[2] The plaintiff's notice to amend filed of record today, not objected to by the defendant, alleging that the cattle allegedly improperly appropriated by the defendant are now within the jurisdiction of this court, cures the difficulty posed by seeking the return of the cattle in a foreign jurisdiction in so far as that fact raised the court's inability to enforce effectively any order directing the return of livestock located in a foreign jurisdiction. It is trite that the court may decline jurisdiction in circumstances where an order it makes may not be capable of being enforced.²

[3] Having heard Mrs Mainga on behalf of the applicant/defendant and Mrs Visser on behalf of the respondent/plaintiff and having read the special plea raised by the defendant and other documents filed of record, the following order is additionally made:

- a) The matter is set down for pre-trial conference on **3 December 2013** at 9h00 and the parties are directed to comply with their obligations relative to a pre-trial conference.
- b) Costs of the special plea shall be in the cause.

PT DAMASEB
JUDGE-PRESIDENT

¹ Herbstein & Van Winsen: The Civil Practice of the High Courts in South Africa, Vol 1, 5th ed. Juta, at p.68

² Steydler NO v Fitzgerald 1991 AD 295 at 346

APPEARANCE:

APPLICANT/DEFENDANT

I MAINGA

OF INONGE MAINGA ATTORNEYS,
ONGWEDIVA

RESPONDENT/PLAINTIFF

ADV VISSER

INSTRUCTED BY

DR WEDER, KAUTA AND HOVEKA INC,
ONGWEDIVA