

REPUBLIC OF NAMIBIA



IN THE HIGH COURT OF NAMIBIA, NORTHERN LOCAL DIVISION, OSHAKATI

REASONS

Case Title: <i>Northern Property One CC // Mulilo</i>	Case NO: HC-NLD-CIV-ACT-DEL - 2018/00160
	Division of Court: Northern Local Division
Heard before: Honourable Mr Justice Cheda	Heard on : 17 June 2019 Delivered on : 17 June 2019 Reasons Released on: 8 July 2019
Neutral citation: <i>Northern Property One CC v Mulilo</i> (HC-NLD-CIV-ACT-DEL-2018-00160) [2019] NAHCNLD 66 (8 July 2019)	
The order: <ol style="list-style-type: none">1. The application for summary judgment is dismissed with costs; and2. The parties must proceed in the normal cause.	
Reasons for Order:	

CHEDA J:

[1] Summary judgment is a drastic procedure which should be granted only where plaintiff has a clear case on the papers as it puts the case to finality.

[2] Where the defence is based on new facts or disputed facts, the court's enquiry is not merely based on :

- a) the principles of the balance of probabilities. The question is whether defendant has disclosed the nature and grounds of his defence and all material facts upon which it is founded or;
- b) whether on the facts disclosed the defendant appears to have as to either the whole or part of the claim a bona fide defence and is good in law.

In my view defendant has raised new material facts which are in dispute and the matter cannot be resolved on the papers and therefore it should proceed to trial.

It is due to the abovementioned reasons that the following order is made:

1. The application for summary judgement is dismissed with costs; and
2. The matter must proceed in the normal cause.

M CHEDA
JUDGE

APPEARANCES

APPLICANT:

Ms W Horn

Of W Horn Attorneys, Oshakati

RESPONDENT:

Mr G Japhet

Of Amupolo & Co. Inc., Ondangwa