

REPUBLIC OF NAMIBIA



HIGH COURT OF NAMIBIA NORTHERN LOCAL DIVISION, OSHAKATI

JUDGMENT

Case no: HC-NLD-CIV-ACT-DEL-2021/00161

In the matter between:

SAIMA HAMBUDA

PLAINTIFF

and

HELAO NAFIDI TOWN COUNCIL

DEFENDANT

Neutral citation: *Hambuda v Helao Nafidi Town Council* (HC-NLD-CIV-ACT-DEL-2021/00161) [2023] NAHCNLD 98 (15 September 2023)

Coram: MUNSU J

Heard: 12 May 2023

Delivered: 15 September 2023

Flynote: Law of Delict – Damages – Whether in prevailing circumstances defendant had a legal duty to take steps to prevent flooding of plaintiff’s property – Lack of evidence – Negligence, wrongfulness and causation not established.

Summary: The plaintiff instituted action against the defendant for damages she allegedly sustained as a result of her home being flooded. She claimed that the

defendant neglected to ensure that its sewer drain was properly secured so as to prevent leakages that would cause flooding of her home. The defendant maintained that there was nothing wrong with its sewer system.

Held, that the plaintiff did not present evidence to establish a legal duty on the defendant to act in a particular manner to prevent the flooding occurring and that the defendant failed to comply with that duty.

Held further, that the plaintiff did not establish that the defendant foresaw the reasonable possibility that its conduct (whether an act or omission) would injure the plaintiff's property thereby causing her patrimonial loss; would take reasonable steps to guard against such occurrence, and that the defendant failed to take such reasonable steps.

The plaintiff's claim was dismissed.

ORDER

1. The Plaintiff's claim is dismissed.
2. There is no order as to costs.
3. The matter is removed from the roll and regarded as finalised.

JUDGMENT

MUNSU J

Introduction

[1] The plaintiff instituted action against the defendant, seeking compensation in respect of alleged damages she incurred to her household contents as a result of a spillage from municipal sewer located next to her home.

[2] The defendant entered appearance to defend the action and the matter proceeded in the ordinary manner with the parties filing pleadings.

The parties

[3] The plaintiff is Ms Saima Hambuda, an adult female and resident of Extension 2, Omafo, Helao Nafidi Town, Ohangwena. She is unemployed.

[4] The defendant is Helao Nafidi Town Council, a local authority, duly proclaimed as such in terms of the Local Authorities Act 23 of 1992, with its place of business at main road, Helao Nafidi Town, Ohangwena, Namibia.

Particulars of claim

[5] The plaintiff alleges that on 28 February 2020, her home was flooded as a result of a spillage from a municipal sewage drain located next to her home. The plaintiff alleges that the defendant failed to ensure that the sewage drain was properly secured so as to prevent leakages that would cause flooding of her home.

[6] In addition, the plaintiff alleges that the defendant was negligent in the following ways:

- (a) By failing to ensure that the sewage drain was properly cordoned off and secured so as not to constitute a source of danger to the residents in terms of flooding;
- (b) By failing to ensure that the drain was safe from public manipulation and vandalism;
- (c) By failing to ensure that the location and the design of the sewage drain did not constitute a flood risk to the residents and the plaintiff's home;

[7] It is further alleged that the defendant owed a duty to the members of the public, including the plaintiff to perform the acts as described in paragraph 6 above, and its failure constitutes a breach of its duty and wrongful in the circumstances. The plaintiff

further alleges that the defendant knew or ought to have known that by failing to ensure that the sewage drain was properly maintained and inspected and was properly cordoned off and secured, it constituted a danger to the residents as there was a risk that it could overflow should it rain, and this was a danger to the plaintiff's home.

[8] As a result of the aforesaid flooding, the plaintiff alleges that her household contents were damaged. In the premises, the plaintiff claims damages in the amount of N\$ 64 800.

The plea

[9] In its plea, the defendant denied being negligent. The defendant pleaded that all its sewage drains are properly laid and secured as per approved engineering standards.

[10] According to the defendant, its sewer system is designed to withstand household wastewater and not storm water. The defendant further pleaded that the flooding of the plaintiff's home was due to the pressure of the flood water, which is a *vis major* and not due to the malfunctioning of the sewer system.

[11] Furthermore, the defendant pleaded that the pipework from the plaintiff's house to the defendant's infrastructure was done by the plaintiff and not the defendant. Additionally, the defendant pleaded that there is no link between the occurrence of events and the defendant as a service provider. As a result, the defendant maintained that it cannot be held liable.

Plaintiff's case

[12] The plaintiff, Ms Saima Hambuda testified that on 28 February 2020, her house was flooded as a result of an overflow from the sewage drain located next to her house. She testified that upon the occurrence of the incident, she went to the defendant's offices to report the incident, and there she was advised by one Mr Haimbili, to compile a list of all her properties that got damaged by the spillage.

[13] The plaintiff further testified that she compiled a list of the damaged properties as requested and took same to Mr Haimbili. However, to her surprise, the plaintiff recounted that Mr Haimbili refused to take the list and informed her that the flooding was caused by an unknown resident who had opened the drain, and therefore the defendant was not liable.

[14] In addition, the plaintiff recounted that she suffered damages to her movable properties in the amount of N\$ 64 800, excluding the costs of repair to her house as well as the costs for the labour of the company she hired to carry out the repairs. According to the plaintiff, the flooding to her house was caused by the defendant's unsecure sewage drains.

[15] The second witness called by the plaintiff was Mr Immanuel Haimbodi. He testified that he is an electrician who works as an independent contractor. He informed the court that he has 25 years' experience working as an electrician and has sufficient experience in repairing, installation, wiring and inspecting of electrical components in businesses and homes. He also testified that he has gained continuous experience in providing quotations for repairing, installing and wiring of electrical plugs.

[16] Mr Haimbodi further narrated that he is familiar with each of the following; the fair and reasonable rate charged for the labour in the electricity industry; the fair and reasonable costs for the various electrical components such as plugs and circuits.

[17] Mr Haimbodi testified that on 01 March 2020, he was hired by the plaintiff to carry out repairs to her electrical plugs in her home. According to the witness, he observed from the water marks on the wall that the flood water had surpassed the plugs on the walls and as result, 8 plugs were damaged and had to be replaced.

[18] Mr Haimbodi further related that he assessed the damage to the plugs and determined that the cost of the labour required to carry out the necessary repairs amounted to N\$1 800, and the cost for the various parts required in the wiring of the plugs amounted to N\$1 500. He asserted that the aforesaid charges were fair, reasonable and market related.

[19] The third and last witness for the plaintiff was Ms Albertina Hamunyela. She testified that on the date of the incident, after she returned from work, she went to park her vehicle at the plaintiff's house as usual. She narrated that the plaintiff's home was under water, and that the plaintiff and her children were busy removing their clothing and furniture from the water. According to Ms Hamunyela, she observed most of the water in the toilet and shower, and she could see that it is where the water was emanating from. She testified that she parked her vehicle in the yard and went back to her home leaving the plaintiff and the children removing the water.

Defendant's case

[20] Two witnesses testified on behalf of the defendant. Mr Elinafye Haimbili is employed by the defendant as the Manager for Infrastructure, Town Planning and Technical Services. He testified that the plaintiff constructed her house with an approved plan. He further related that, as a matter of practice and defendant's requirement, the plaintiff was responsible for the laying of the pipelines from her house to the defendant's infrastructure.

[21] Mr Haimbili further testified that on 27 February 2020, Helao Nafidi Town received well above average rainfall. As a result of the heavy rainfall, shopping malls were flooded, water pockets were flowing and roads were submerged. Mr Haimbili further narrated that on 28 February 2020, the plaintiff called the defendant's offices and informed them that her house was flooded.

[22] According to Mr Haimbili, he dispatched his team to attend to the plaintiff. He testified that the team noted that the plaintiff's house was indeed flooded. They further noted that the flooding was as a result of rain water that had drained into the sewer system. Mr Haimbili testified that the sewer system is only designed to withstand household wastewater and not flood water.

[23] Mr Haimbili further narrated that the plaintiff's house is 'low laying' and when flood water in the sewage system (manhole) in her erf started to build up, the storm

water came out through the shower and toilet which then flooded the house. According to Mr Haimbili, the flooding can thus not be said to have been as a result of the malfunctioning of the sewer system.

[24] Mr Haimbili recounted that on 30 July 2020, the plaintiff's matter was tabled and discussed by the Council which resolved not to take responsibility over the alleged damages as the overflow and damages to the property was not caused by the malfunctioning of the defendant's sewerage system.

[25] In amplification, Mr Haimbili testified that the whole sewerage system is a gravitational system. This means that everything in the system gravitates from the point of origin to the pump station. He narrated that the plaintiff's pipework had no gullies which would trap and not allow water to flow backwards into the house. Mr Haimbili explained that had the plaintiff's pipework been fitted with gullies, any backflow of water would exit by those gullies.

[26] Ms Inge Ipinge the Chief Executive Officer of the defendant corroborated Mr Haimbili. She however did not visit the plaintiff's house to make observations.

Inconsistencies in the parties' respective cases

[27] The plaintiff's case changed several times during the course of proceedings. Her pleaded case was that the defendant had been negligent in failing to make sure that the sewage drain was secure so as to prevent leaks from flooding her property. In her evidence, she was clear that the flooding of her home was caused by the pump station which is located close to her house. She testified that:

“The one I was referring to My Lord it is the one which is closer to my house which caused the flooding in my house.”¹

[28] In contrast with her pleaded case, she recounted that:

¹ Page 11 of the record of proceedings.

“But this main one which caused the flooding cannot be opened by a resident My Lord.”²

[29] Her legal representative enquired further:

“Now can you explain to the Court why that is, why you are saying so? Why are you saying that it cannot be opened by a resident?”

She replied that:

“The ones which is closer to my house it is fenced off with the yard and it is been locked My Lord.”³

[30] In cross-examination, the plaintiff maintained that the manhole that was allegedly opened by an unidentified resident was not the cause for the flooding of her property. The following were her exchanges with counsel for the defendant:

“Q: You testified earlier that Mr Haimbili had explained to you that the cause of the flood is a member of the public that opened a drain and the water has then flown to the drain, put pressure on it and then causing the flood. Is that correct? Do you agree with that?”

A: That is correct that is what he explained My Lord but he did not mention who that specific public member is.⁴

Q: Okay. But did you believe that is the cause of the flood?

A: No, I did not believe that because I did not see it.⁵

Q: Okay. So am I correct to understand this to say that the pleading in this particular paragraph to say that it is your concern that the rain has contributed to the flood in your house?

A: That is not correct My Lord. I did not have any concern that the rains contributed to the flooding.⁶

² Ibid.

³ Ibid.

⁴ At 36 para 20-30 of the record of proceedings.

⁵ At 37 of the record of proceedings.

⁶ At 37 para 10-20 of the record of proceedings.

Q: So it is irrelevant that what is pleaded here?

A: Correct.”⁷

[31] The plaintiff stated during her testimony that the manhole that was hinted as the probable cause of the flooding is located ‘a long distance’ away from her house.⁸ This was also confirmed by Mr Haimbili who testified that the manhole they found open was ‘quite further away’ from the plaintiff’s house.⁹

[32] Despite the plaintiff’s testimony that the manhole that was allegedly opened by an unidentified individual did not flood her residence, her counsel, in closing arguments contended that:

“In *casu* a manhole was opened by an unknown resident water entered the sewer system leading to an overflow and flooding of the plaintiff’s home. The defendant owns the sewer system that includes the manhole, the defendant has a duty to ensure that its infrastructure is secure and safe from vandalism and when vandalised or damaged to promptly repair same. Failure to repair, maintain and replace missing hardware such as metal lids constitute a negligent omission on the part of the defendant as happened in this case and therefore the defendant is liable.”

[33] I will deal with counsel’s argument above later in the judgment. However, as can be seen above, such conclusion is not in line with the plaintiff’s evidence.

[34] Similarly, the defendant’s case was not without contradictions. While Mr. Haimbili stated during his testimony that he had noticed that rainwater had entered the sewer system and caused the plaintiff’s residence to flood, he later suggested that runoff from the slope, not a sewer backup, must have caused the flooding.

Factual findings

[35] It is common cause that the flooding of the plaintiff’s home was preceded by above average rainfall. I find that the plaintiff managed to establish that her house got

⁷ At 37 para 20 of the record of proceedings.

⁸ See at 9 of the record of proceedings.

⁹ At 145 of the record of proceedings.

flooded as a result of sewer backup. She had to dig up her sewer pipe to disconnect it from the defendant's sewer system in order to stop the sewer backup. Mr Haimbili confirmed that the sewer pipe had been disconnected from the defendant's sewage system when he arrived at the plaintiff's home.

[36] Both the plaintiff and the defendant's witnesses speculated on the cause of the flooding.¹⁰

[37] The claim that the plaintiff's property flooded as a result of a manhole that was opened by an unidentified person cannot be sustained for a number of reasons. The plaintiff claims that she heard it from Mr. Haimbili. On the other hand, Mr. Haimbili mentioned it as a remote possibility that could have contributed to the flooding. He elaborated that the rain had ceased by the time he had visited the area¹¹, therefore he had not seen water flowing into the aforementioned manhole. He further explained that manholes in flood-prone locations are elevated to prevent flooding. He added that he did not encounter a manhole that was submerged by water.¹² He further explained that the manholes in flood prone areas are raised so as not to be submerged by water. According to Mr Haimbili, if water had entered the manhole in question, a number of houses within the vicinity would have been affected.¹³ Mr. Haimbili was of the opinion that no water entered into the manhole because of its height and since it is not located in a flood-prone location, although he did not completely rule out the possibility.¹⁴

[38] Given the above, there cannot be any basis on the facts to conclude that the plaintiff's home got flooded due to the manhole allegedly opened by an unknown member of the public.

Evaluation

¹⁰ In respect of the plaintiff, see at 11-12 para 30, at 23 para 10 and at 24 of the record of proceedings. In respect of Mr Haimbili, see at 131 para 20, at 147 para 30 – at 148 of the record of proceedings.

¹¹ See at 113 para 20, at 132 para 10 of the record of proceedings.

¹² See at 115 para 10-20, at 145 of the record of proceedings.

¹³ At 124 para 20-30 of the record of proceedings.

¹⁴ At 125 para 20-30 of the record of proceedings.

[39] I was unable to find a comparable case that was decided in our jurisdiction. There are however, authorities in other jurisdictions, including South Africa that are of persuasive authority.

[40] In *Minister of Safety and Security v Van Duivenboden*¹⁵ the court had the following to say:

'Negligence, as it is understood in our law, is not inherently unlawful – it is unlawful and thus actionable, only if it occurs in circumstances that the law recognises as making it unlawful. Where the negligence manifests itself in a positive act that causes physical harm it is presumed to be unlawful, but that is not so in the case of a negligent omission. A negligent omission is unlawful only if it occurs in circumstances that the law regards as sufficient to give rise to a legal duty to avoid negligently causing harm. It is important to keep that concept quite separate from the concept of fault. Where the law recognises the existence of a legal duty it does not follow that an omission will necessarily attract liability-it will attract liability only if the omission was also culpable as determined by the application of the separate test that has consistently been applied by this court in *Kruger v Coetzee*, namely whether a reasonable person in the position of the defendant would not only have foreseen the harm but would also have acted to avert it.'

[41] In *Rhynardt Beck v Berg River Municipality*¹⁶ the plaintiff had instituted a claim for damages against the defendant after his house was flooded in December 2007, June 2009 and April 2011. His claim for damages related only to damages sustained to his house during the 2011 flood. His claim was on the basis that the defendant had a legal duty to ensure that its storm-water drainage system was designed and maintained so as to avert flood damage that might be caused by storm-water run-off. The question was whether the defendant municipality was liable for damages allegedly sustained by the plaintiff as a result of the flooding during 2011. The parties presented evidence, including expert evidence in respect of the flooding.

[42] Of importance, are the findings of the court. *Inter alia*, the court held that:

¹⁵ *Minister of Safety and Security v Van Duivenboden* 2002 (6) SA 431 (SCA).

¹⁶ *Rhynardt Beck v Berg River Municipality* (20691/2011) [2015] ZAWCHC 163 (5 November 2015).

'The mere fact that the drainage system was unable to cope with the flood in question and that the plaintiff's property was damaged as a result does not, however, as I have sought to explain, amount, without more, to a *prima facie* case.¹⁷

[43] The court further held that the plaintiff had the onus to establish all the elements of the aquilian action, including causation. The learned judge concluded, thus:

'[N]otwithstanding the sympathy I have for the plaintiff and his family for the trauma and financial loss that they have experienced as a result of the successive flooding of their home, I consider that the plaintiff has fallen short of discharging the onus to establish the existence of the alleged duty in law on the part of the defendant or its negligent breach. In the circumstances the appropriate order would be one absolving the defendant from the instance with costs.'

[44] The defendant municipality appealed to the full bench of the High Court and its appeal was upheld. However, the plaintiff appealed to the Supreme Court of Appeal (SCA).¹⁸ In its opening paragraph, the SCA had the following to say:

'When one is told, in isolation, that a rate payer and resident of a small town, had his house flooded on three occasions encompassing two successive two-year intervals and sustained ostensible extensive damage to his house, due to the municipal storm-water drainage system being unable to cope with heavy rainfall, one's instinctive reaction, is that the local municipality should be held liable to compensate such resident for the damage caused by the last flood. That instinctive reaction, because of the lack of evidence to fix the municipality with liability, dealt with more extensively later in this judgment, has to give way to the compelling opposite conclusion.'

[45] The SCA went to state the following:

'[43] The respondent's claim against the Municipality is essentially one based on omission. As pointed out by J Neethling and JM Potgieter *Neethling-Potgieter-Visser Law of Delict* 7 ed (2014) at 58-59, with reference to the decision of this court in *Minister of Safety and Security v Geldenhuys* 2004 (1) SA 515 (SCA) at 528 that, as a general rule, liability follows only if the omission was in fact wrongful, and this will be the case

¹⁷ Para 42.

¹⁸ *Bergvriev Municipality v Van Ryn Beck* (1269/2017) [2019] ZASCA 38 (29 March 2019).

only if (in the particular circumstances) a *legal duty* rested on a defendant to act positively to prevent harm from occurring and that a defendant failed to comply with that duty.

[44] While conceptually the inquiry as to wrongfulness might be anterior to the enquiry as to negligence, it is equally so that without negligence the issue of wrongfulness does not arise, for conduct will not be wrongful if there is no negligence. Depending on the circumstances, it may be convenient to assume the existence of a legal duty and to consider, first, the issue of negligence. It may also be convenient when the issue of wrongfulness is considered first, to assume negligence. So, too, in a particular case one might assume both wrongfulness and negligence and consider causation first.¹⁹

[45] Before us, counsel for both parties were of the view that the case turned on the question of wrongfulness. In my view, the problem faced by the respondent is that the evidence presented fell short of establishing any one of the aforesaid elements so as to land the Municipality with delictual liability. The trial court was rightly concerned about the paucity of evidence.

[46] At paragraph [48] and [49] the SCA held that:

'[48] It is for a plaintiff to allege and prove the defendant's negligence.²⁰ The onus is on a plaintiff to establish that a reasonable person in the position of the defendant:

- (a) Would foresee the reasonable possibility that the conduct (whether an act or omission) would injure another person's property and cause that person patrimonial loss,
- (b) would take reasonable steps to guard against such occurrence, and
- (c) that the defendant failed to take such reasonable steps.²¹

[49] It is now well established that, whether in any particular case, the precautions taken to guard against foreseeable harm can be regarded as reasonable or not depends on a

¹⁹ See *Gouda Boerdery BK v Transnet Ltd* 2005 (5) SA 490 (SCA) at 499B-D, *Hawekwa Youth Camp & another v Byrne* [2009] ZASCA 156; [2010] 2 All SA 312 (SCA); 2010 (6) SA 83 (SCA) at 91F and *Van Vuuren v Ethekwini Municipality* [2017] ZASCA 124; 2018 (1) SA 189 (SCA) para 18. See also L T C Harms *Amler's Precedents of Pleadings* 9 ed (2018) at 270.

²⁰ *Eversmeyer (Pty) Ltd v Walker & another* 1963 (3) SA 384 (T) and also *Amler op cit* fn 8.

²¹ *Kruger v Coetzee* 1966 (2) SA 428 (A) and *Amler op cit* fn 8.

consideration of all the relevant circumstances.²² As stated above, the 2007 flood was one that everyone appears to have accepted as having been the result of a freak storm, causing wide-spread devastation. In the absence of any reliable data in relation to the nature and intensity of the storm in respect of 2011, it is difficult to see how the respondent could discharge the onus. The obvious questions that arise are, what in these unknown circumstances could reasonably be foreseen and what reasonable steps could have been taken to prevent the flooding. These questions were not addressed.

[47] The trial court, with reference to the decision of the SCA in *City of Cape Town v Bakkerud*²³, was concerned about fixing local authorities with liability on a blanket basis and about being cautious in imposing too onerous a duty on such authorities. In *October v Nelson Mandela Bay Metropolitan Municipality*²⁴ the court observed that:

‘Significantly, the Court in that matter [*bakkerud*] did not assert a general legal duty upon local authorities to maintain roads and pavements, but found that the existence of the legal duty is a matter to be determined in the particular circumstances of the matter. It is therefore for the plaintiff in any particular matter to establish both the existence of the legal duty (in this instance to repair a road surface or drain cover or warn of its state of disrepair) and that the failure to do so was blameworthy in the circumstances.’

[48] In *Municipality of the City of Port Elizabeth v Meikle*²⁵ the court stated that a local authority has neither a general duty to maintain and repair, nor immunity from liability if it omits to do so.

[49] In *Rhynardt*²⁶, the SCA concluded that:

‘[54] Like the trial court, we too have a degree of sympathy for the respondent. It is likely that he was restricted in the presentation of his case by financial considerations. However, he did employ an expert who, judging by his qualifications and experience, ought to have been able, if so directed, to place sufficient evidence at the disposal of the trial court to enable a more informed decision.’

²² *Cape Metropolitan Council v Graham* 2001 (1) SA 1197 (SCA) at 1203.

²³ *City of Cape Town v Bakkerud* 2000 (3) SA 1049 (SCA).

²⁴ *October v Nelson Mandela Bay Metropolitan Municipality* (CA 173/2008) [2008] ZAECH 205 (12 December 2008).

²⁵ *Municipality of the City of Port Elizabeth v Meikle* [2002] JOL 9525 (SCA).

²⁶ See footnote 18.

[50] In the present matter before court, the plaintiff was initially away from home when flooding started in her house. As was already established, she made assumptions about the reason for the sewer backflow. She didn't verify whether the pump station was secure, which would become her claim in the particulars of claim. She testified that:

"I would not know if it was locked on that specific day but it is always kept locked. It is only opened or unlocked when the employees of Town Council who are working on it.

Q; Did you take time to inspect it after you were provided with this information to see whether it was unlocked or tampered with?

A: No I did not go there My Lord.²⁷

[51] The plaintiff's home had never previously flooded, nor were any reports made to the defendant prior to the flooding. This was the first incident. The defendant's witness stated in his testimony that the defendant's drainage system, including the manholes is properly secured according to approved standards. He also stated that the plaintiff's pipework, which was done by herself did not have gullies which could have averted the flood. The issue of gullies was only raised during the witness's evidence and was not taken up with the plaintiff. Therefore, such evidence is to be disregarded.

[52] According to the defendant, it did not need to repair anything after the flooding because its sewer system was not malfunctioning. Thus, it is not clear, under the circumstances, what the defendant omitted to do. There was no evidence establishing a legal duty on the defendant to act in a particular manner to prevent the flooding occurring and that the defendant failed to comply with that duty. The plaintiff did not establish that:

- (a) the defendant foresaw the reasonable possibility that its conduct (whether an act or omission) would injure the plaintiff's property thereby causing her patrimonial loss;
- (b) would take reasonable steps to guard against such occurrence, and
- (c) that the defendant failed to take such reasonable steps.

²⁷ At 11 of the record of proceedings.

[53] It is unclear in these unknown circumstances what could reasonably be foreseen and what reasonable steps could have been taken by the defendant to prevent the flooding. There was simply no evidence other than to say that her house was flooded. In the absence of supporting evidence, this issue alone does not establish negligence on the part of the defendant. For these reasons, I find that the plaintiff did not discharge her onus and her claim stands to be dismissed.

Costs

[54] I am mindful of the general rule regarding costs. I made a finding that the plaintiff's home was flooded as a result of sewer backflow. I have no doubt that some of her properties were damaged in the process. Mr Haimbili for the defendant had informed her to compile a list of the properties that were damaged, however, the defendant declined to compensate her. Considering that the plaintiff's home got flooded as a result of sewer backflow and not mere runoff, I find her claim not frivolous. I am of the considered view that to mulct the plaintiff with costs would be to add to the loss she already endured. Accordingly, there ought to be no order as to costs.

The order:

[55] For these reasons, I make the following order:

1. The Plaintiff's claim is dismissed.
2. There is no order as to costs.
3. The matter is removed from the roll and regarded as finalised.

D C MUNSU
JUDGE

APPEARANCES

PLAINTIFF: D Ndana
 Of Jacobs Amupolo Lawyers & Conveyancers, Ongwediva

DEFENDANT: L Ihalwa
 Instructed by Kishi Shakumu & Co. Inc, Windhoek.