



HIGH COURT OF NAMIBIA MAIN DIVISION, WINDHOEK

JUDGMENT

Case no: I 3614/2013

In the matter between:

**STANDARD BANK NAMIBIA LIMITED**

**PLAINTIFF**

And

**RONNIE GERTZE**

**DEFENDANT**

**Neutral citation:** *Standard Bank Namibia Limited v Gertze (I 3614-2013) [2016] NAHCMD 186 (23 June 2016)*

**Coram:** MILLER AJ

**Heard:** 23 June 2016

**Delivered:** 23 June 2016

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**ORDER**

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1. 1. Payment of the sum of Namibian Dollars N\$ 231 775.40 which was the amount reached in the particulars of claim;
2. Compound interest as agreed on the rate of 14.80% in the sum of two hundred and thirty one thousand seven hundred and seventy five Dollars and forty cents per annum calculated from the 18th of June 2013 to the date of final payment;
3. Costs of suit, including the costs of one instructing and one instructed Counsel.

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**JUDGEMENT**

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MIILER AJ:

[1] In this matter the Plaintiff instituted action against the Defendant claiming payment to in the sum of N\$ 231 775.40 together with interest and costs. The Defendant at all times was unrepresented by a Legal Practitioner. He nonetheless filed a plea to the Particulars of Claim and also launched an interlocutory application seeking to set aside the summons issued by the Plaintiff on the basis that the Plaintiff's Legal Practitioner did not file a proper power of attorney to institute the action.

[2] When the proceedings commenced before me yesterday I directed that the interlocutory application should be determined first. The Defendant in addressing me pointed to that which was contained in his Founding Affidavit and submitted that, supporting his case. Mr. Van Vuuren who appeared on behalf of the Plaintiff submitted

that the application was fundamentally defective in as much, as the Founding Affidavit although apparently attested to did not bear the signature of the Plaintiff.

[3] Although the Plaintiff contended that it was not necessary for the Plaintiff to file a Power of Attorney in view of the current High Court rules, I contended further that in any event it had *ex abundante cautele* I presume filed a further Power of Attorney authorising the institution of the action and rectifying any steps that had been taken prior to the second Power of Attorney having been filed. I dismissed the application and indicated that I will give reasons for so doing during the cause of judgment in the main action.

[4] It is correct that on the papers filed on the Court file, the Founding Affidavit does not bear the signature of the Plaintiff. Apart from that I am satisfied that to the extent that a Power of Attorney was necessary the filing of the second Power of Attorney cured any defect that may have existed in the original Power of Attorney. The fact that the Founding Affidavit did not contain the Defendant's signature was not the only reason for me dismissing the application.

[5] The trial thereupon commenced and the Plaintiff called its 1<sup>st</sup> witness Mr. Nolan Christians. During the cause of the evidence of Mr. Christians and shortly after a short adjournment the Defendant brought an application that I should recuse myself on the basis that I had found, which I did not at that stage, that the Founding Affidavit did not contain his signature and that the application was procedurally defective. I declined the invitation to recuse myself and the trial then continued.

[6] While Mr. Christians was still giving evidence the Defendant rose and informed me that he was no longer attending the proceedings and excused himself. He did not take any further part in the proceedings. He adopted that stance ostensibly because of my refusal to recuse myself. I thus have only the evidence of Mr. Christians which evidence was not disputed in cross examination since the Defendant had excused

himself from the further proceedings. Having called Mr. Christians for Plaintiff, it then closed its case.

[7] The evidence of Mr. Christians may be summarised in the following manner; the Defendant was granted a loan by the Plaintiff in the sum of N\$ 231 775.40 during August 2011. Although the witness could not locate the agreement underpinning the transaction, his evidence is to the fact that the Plaintiff uses a standard pro forma document in respect of all applications which he handed in as Exhibit E at the trial. His evidence is to the effect that the Plaintiff would have entered into an identical agreement with the Defendant in respect of the loan.

[8] What remains however, is the uncontested fact that the Plaintiff did on the 25th of August 2011 advance the amount of N\$ 200 000.00 to the Defendant, and that the Defendant had subsequently made periodical payments to the Plaintiff to settle the outstanding amount. From February 2012 sporadic payments were received and in some instances no payments were received on a monthly basis. Mr. Christians testifies that the amount currently due and owing which is the capital together with the interest, is the sum of N\$ 231 775.40. As I had indicated his evidence remains uncontested and I have no reason but to accept the evidence of Mr. Christians in all material respects.

[9] On the evidence, it is apparent that the sum of N\$ 200 000.00 was advanced to the Defendant by the Plaintiff and, I am further satisfied that the transaction was underpinned by the agreement which forms Exhibit E, in those circumstances it follows that I must on the facts before me find in favour of the Plaintiff.

[10] I accordingly grant judgment in favour of the Plaintiff against the Defendant for:

1. Payment of the sum of Namibian Dollars N\$ 231 775.40 which was the amount reached in the particulars of claim;
2. Compound interest as agreed on the rate of 14.80% in the sum of two hundred and thirty one thousand seven hundred and seventy five Dollars and forty cents per annum calculated from the 18th of June 2013 to the date of final payment;
3. Costs of suit, including the costs of one instructing and one instructed Counsel.

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Miller AJ  
Acting Judge

APPEARANCE:

APPLICANT:

ADV VAN VUUREN

INSTRUCTED BY:

Behrens & Pfeifer, Windhoek

RESPONDENT

RONNIE GERTZE

In Person, Windhoek