

REPUBLIC OF NAMIBIA



HIGH COURT OF NAMIBIA, MAIN DIVISION, WINDHOEK
EX TEMPORE JUDGMENT

Case No: HC-MD-CIV-ACT-CON-2023/02332

In the matter between:

MAGRIETHA JOHANNA MARAIS NO

PLAINTIFF

and

JINWEI WEI SHEN

1ST DEFENDANT

ERF 7260 NEW CASTLE STREET CC

(Registration Number CC/98/620)

2ND DEFENDANT

Neutral Citation: *Marais NO v Shen* (HC-MD-CIV-ACT-CON-2023/02332)

[2023] NAHCMD 171 (26 March 2024)

Coram: MASUKU J

Heard: 26 March 2024

Delivered: 26 March 2024

ORDER

1. Payment of the amount of N\$499 950.
2. Interest calculated on the capital loan amount at the rate of 7 percent which interest is calculated daily and compounded monthly in arrears from 19 April 2019 until date of payment.
3. Costs of suit as between counsel and own client consequent upon the employment of one instructing and one instructed counsel.

JUDGMENT

MASUKU, J:

Introduction

[1] Serving before court is an application for summary judgment in which the plaintiff claims payment of an amount of N\$499,950; interest on the said amount, calculated at the rate of 7 percent, which interest is calculated daily and compounded monthly in arrears from the 19 April 2019 until the date of payment and an order declaring the following immovable property executable which is a unit consisting of section no 7, as shown more fully described on Sectional Plan number 32 of 1998.

[2] The claim arises from an amount which was lent and advanced by the plaintiff to the second defendant and in respect of which a mortgage bond was entered into, and in which the first defendant represented the second defendant and further signed as surety for the due and punctual fulfilment of the second defendants' indebtedness to the plaintiff for an amount of N\$1 650 000.

[3] The amount claimed by the plaintiff is the shortfall, being the amount outstanding from the amount loaned by the plaintiff to the second defendant.

The plaintiff, as it was entitled to, filed an application for summary judgment which was opposed by the first defendant. When one has regard to the first defendant's affidavit in opposition to the application for summary judgment application, he literally admits owing the amount that is claimed and points to COVID-19 as being the reason why the amount claimed remains unpaid. He prays that the court orders the parties to settle the matter out of court.

[4] Summary judgment has been said to be a speedy remedy and in terms of which meritless defences by defendants are not entertained. The court deals with the matter and grants judgment as prayed for if satisfied that the plaintiff has made a good case in terms of the rules of court.

[5] A defendant, who wants to oppose summary judgment has two options. The first is to give security in terms of rule 60(5). Second is for the defendant to satisfy the court by affidavit, which must be delivered before twelve noon on the court day, but one before the day on which the application is to be heard. What the defendant must do in that affidavit, is to state that he or she has a bona fide defence to the action. Furthermore the affidavit must disclose fully the nature and grounds of the defence and the material facts relied upon.¹

[6] I quote from the *locus classicus* judgment of *Maharaj v Barclays National Bank*² what the duty of a defendant is in a summary judgment application. Corbett JA says the following:

'Accordingly, one of the ways in which a defendant may successfully oppose a claim for summary judgment is by satisfying the courts by affidavit that he has a bona fide defense to the claim, where the defense is based upon facts in the sense that material facts alleged by the plaintiff in his summons or combined summons are disputed or new facts are alleged constituting a defense the Court does not attempt to decide these issues or to determine whether or not there is a balance of probabilities in favor of the one party or the other. All that the court inquiries into is a, whether the defendant has fully disclosed the nature and grounds of his defense and the material facts upon which it is founded, and b whether on the facts so disclosed, the defendant

¹ Rule 60(4)(2)(b).

² *Maharaj v Barclays National Bank* 1976(1) SA (AD) 418 at 426.

appears to have, as to either the whole or part of the claim, a defence which is both *bona fide* and good in law. If satisfied on these matters, the Court must refuse summary judgment, either wholly or in part, as the case may be.’

[7] As I have indicated, when one reads the opposing affidavit filed by the defendants in this case, they admit owing the amount in question. In the circumstances, there is no basis upon which this court can refuse summary judgment because the defendants have clearly not set out a bona fide defence to the claim.

[8] In the premises, I will therefor grant judgment in favour of the plaintiff for the payment of the amount claimed as follows:

1. Payment of the amount of N\$499 950.
2. Interest calculated on the capital loan amount at the rate of 7 percent which interest is calculated daily and compounded monthly in arrears from 19 April 2019 until date of payment.
3. Costs of suit as between counsel and own client consequent upon the employment of one instructing and one instructed counsel.

T S MASUKU
Judge

APPEARANCES

PLAINTIFF: J Strydom

Instructed by: Theunissen, Louw & Partners, Windhoek

DEFENDANTS: No Appearance