

REPUBLIC OF NAMIBIA



HIGH COURT OF NAMIBIA MAIN DIVISION, WINDHOEK

EX TEMPORE JUDGMENT

Case no: HC-MD-CIV-ACT-CON-2023/03037

In the matter between:

FIRST NATIONAL BANK OF NAMIBIA LIMITED

PLAINTIFF

and

MOSES MODISE

DEFENDANT

Neutral citation: *First National Bank of Namibia Limited v Modise* (HC-MD-CIV-ACT-CON-2023/03037) [2024] NAHCMD 93 (8 March 2024)

Coram: SIBEYA J

Heard on: 7 December 2023

Delivered: 7 December 2023

Reasons: 8 March 2024

ORDER

Summary judgment is granted in favour of the plaintiff against the defendant as follows:

1. Payment in the amount of N\$169 425.18.
2. Interest on the aforesaid amount (compounded monthly) at prime rate (11.00 percent) plus 6.0 percent per annum as from 01 June 2023 until the date of full and final settlement of the Principal Debt.
3. Costs on an attorney client scale.
4. The matter is removed from the roll: Case Finalised.

EX TEMPORE JUDGMENT

Sibeya J:

Introduction

[1] This was an application by the plaintiff against the defendant for summary judgment. The plaintiff is on the date of hearing of 7 December 2013, represented by Ms Fernandes while the defendant was not in court.

The findings

[2] The defendant was in court on 9 November 2023 when this matter was postponed to today 7 December 2023 at 10 o'clock for hearing of the summary judgment application. That is not all, as on 28 November 2023, the defendant filed a

notice to oppose the summary judgment application. On the same notice to oppose, at the top right corner, depicts the hearing date and time of 7 December 2023 at 10 o'clock.

[3] The defendant also filed an opposing affidavit, dated 24 November 2023, which he filed on 28 November 2023 and which also depicts today's hearing date and time, of 7 December 2023 at 10 o'clock. Therefore, I have no doubts that the defendant is aware of today's proceedings, scheduled for 10 o'clock and there is no explanation for his absence, neither is the court informed of same, and as a result the matter shall proceed.

[4] Considering that there is an opposing affidavit filed, and the defendant is not before court, there is no *bona fide* defence to the plaintiff's claim that is revealed in the opposing papers. The questions raised in the opposing affidavit about the absence of the resolution to institute the proceedings is covered, in my view. The defendant, in fact, appears to concede that he is prepared to only pay the capital amounts owed and not the interest and costs, without substantiation. I am therefore not satisfied that even on the papers of the defendant, there is a *bona fide* defence that is disclosed.

[5] As a result, I order that summary judgment is granted in favour of the plaintiff against the defendant.

[6] Summary judgment is, therefore, granted in favour of the plaintiff against the defendant as follows:

1. Payment in the amount of N\$169 425.18
 2. Interest on the aforesaid amount (compounded monthly) at prime rate (11.00 percent) plus 6.0 percent per annum as from 01 June 2023 until the date of full and final settlement of the Principal Debt.
 3. Costs on an attorney client scale.
 4. The matter is removed from the roll: Case Finalised.
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O Sibeya
Judge

APPEARANCES

PLANTIFF: F Fernandes
Of Shikongo Law chambers, Windhoek

DEFENDANTS: No appearance