**REPUBLIC OF NAMIBIA**

****

**HIGH COURT OF NAMIBIA, MAIN DIVISION, WINDHOEK**

**RULING ON POINT *IN LIMINE***

Case no: HC-MD-CIV-ACT-CON-2018/01116

In the matter between:

**SMALL AND MEDIUM ENTERPRISES LIMITED APPLICANT/PLAINTIFF**

**REPRESENTED BY BRUNI & MCLAREN**

and

**COLGAR INVESTMENT CC FIRST RESPONDENT/DEFENDANT**

**COLGAR SISAMU MASWAHU SECOND RESPONDENT/DEFENDANT**

**Neutral Citation***: Small and Medium Enterprises Limited represented by Bruni & McLaren v Colgar Investment CC* (HC-MD-CIV-ACT-CON-2018/01116) [2018] NAHCMD 319 (11 October 2018)

**CORAM:** PRINSLOO J

**Heard: 03 OCTOBER 2018**

**Delivered: 11 OCTOBER 2018**

**Reasons: 11 OCTOBER 2018**

**Flynote:** Practice and Procedure – Incorrect citation of a party to the proceedings – Whether an incorrect citation of a party renders a claimant not to have *locus standi* in a matter – Incorrect citation not material and can be rectified by a mere amendment.

**ORDER**

1. Point *in limine* is dismissed with costs.
2. Matter is postponed to 15 October 2018 at 10:00 for argument on the application for summary judgment.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**RULING IN TERMS PRACTICE DIRECTION 61**

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

PRINSLOO J:

[1] The matter before me is an opposed summary judgment application. The applicant’s claim is based on a written loan agreement and a written deed of suretyship.

[2] On behalf of the respondents a point *in limine* was raised as follows:

‘ 1. The Plaintiff, in the summons and Particulars of claim, is incorrectly cited as: “Small and Medium Enterprises Limited”.

2. That being the case:

2.1 The Plaintiff cited herein lacks the locus standi *in judicio*.

2.2 the Combined summons do not comply with the Rules of this Honourable court.

2.3 the Combined summons are materially defective.

3. The Plaintiff should have been cited as Small and Medium Enterprises Bank Limited Reg No. 2011/0174.’

[3] The summons cited the plaintiff as Small and Medium Enterprises represented by Bruni and McLaren. In the Particulars of Claim the plaintiff is described as follows:

‘PLAINTIFF is SMALL AND MEDIUM ENTERPRISES LIMITED (Registration Number: 2011/0174) a registered commercial bank and public company with limited liability, in liquidation by order of court dated 29 November 2017, under case number HC-MD-CIV-GEN-2017/00227, herein represented by DAVID JOHN BRUNI and IAN ROBERT MCLAREN of BRUNI & MCLAREN with its principal place of business at 2ND FLOOR, HIDAS CENTRE, 21 NELSON MANDELA AVENUE, KLEIN WINDHOEK, REPUBLIC OF NAMIBIA, duly appointed in terms of letters of appointment dated 11 July 2017 and 18 January 2018.’

[4] The argument advanced on behalf of the respondent is that because the word ‘bank’ is not contained in the combined summons, it causes the plaintiff to lack a standing in law to sue, as the combined summons does not comply with the rules. The argument further advanced is that the omission of the word bank is a material defect in the citation of the plaintiff. It was argued that the summons refers to Small and Medium Enterprises Limited it just refers to a company but it is not clear what company is referred to. Therefor respondent prayed that the application for summary judgment by applicant be dismissed with costs.

[5] In response it was argued on behalf of the applicant that the respondents are making up defences that are not contained in the opposing affidavit filed on behalf of the first and second respondents. It was further argued that the second respondent took no issue with the plaintiff as an entity, i.e. a bank. The second respondent confirmed in his opposing affidavit that he applied for a loan from the plaintiff which was granted and money was paid into his account. The second respondent disputed his liability to the applicant in respect of amount claimed in the particulars of claim.

[6] In concluding it was argued on behalf of the applicant that that the omission of the word ‘bank’ on the summons was a typographical error and does not affect the *locus standi* of the plaintiff.

Discussion

[7] In terms of Rule 7(4) the summons consist of two parts namely the first part which is addressed to the sheriff and the second part which contains particulars of claim. Rule 7(9)[[1]](#footnote-1) makes specific reference to the second part of the summons and what must be contained therein.

[8] The rule does not prescribe that the actual Form 1 (combined summons) should contain the same detailed particulars regarding the parties as is required in respect of the second part of the summons.

[9] The plaintiff is an existing legal entity that has been incorrectly cited in Form 1 of the summons. In paragraph 1 of the particulars of claim the plaintiff is described in such detail that there can be no doubt in the mind of the defendants as to who the plaintiff is in my view, and, this approach by the respondents is overly technical and is not conducive to having real issues between the litigants decided in as speedy and cost effective manner as possible.

[10] The view that an incorrect citation of the plaintiff meant that the plaintiff has no *locus standi* is incorrect. The plaintiff must be correctly cited but an error in the citation can be corrected by way of amendment and an incorrect description does not mean there is no locus standi.

[11] If one has regard to the opposing affidavit it makes it clear beyond a doubt that the defendants know and appreciate the plaintiff’s case against them. The shortcoming in the citation of the plaintiff on Form 1 is not to the prejudice of the defendants.

[12] In the result, I then make the following order:

1. Point *in limine* is dismissed with costs.
2. Matter is postponed to 15 October 2018 at 10:00 for Argument on the application for summary judgment.

\_\_\_\_\_\_\_\_\_\_\_\_

J S Prinsloo

Judge

APPEARANCES:

FOR THE PLAINTIFF: K Kamuhanga

of Angula Co Inc., Windhoek

FOR THE DEFENDANT: T Ipumbu

of Titus Ipumbu Legal Practitioners, Windhoek

1. (9) A combined summons must set out -

   (a) the name and, where known, the first name or initials by which the defendant is known to the plaintiff, his or her residence or place of business and, where known, his or her occupation and, if he or she is sued in any representative capacity, that capacity and the summons must also state the defendant’s sex;

   (b) the full names, sex, occupation and the residence or place of business of the plaintiff, and where he or she sues in a representative capacity, that capacity;

   (c) if the plaintiff elects to receive any subsequent document by electronic means through e-justice, he or she must state his or her electronic address; and

   (d) the cause of action and the relief claimed. [↑](#footnote-ref-1)