

REPUBLIC OF NAMIBIA



HIGH COURT OF NAMIBIA MAIN DIVISION, WINDHOEK

RULING

Case no: I 2087/2016

In the matter between:

NAMIBIA BREWERIES LIMITED

PLAINTIFF

and

TIMOTEUS PAULUS trading as GWENI BAR

DEFENDANT

Neutral citation: *Namibia Breweries Limited v Timoteus Paulus trading as Gweni Bar* (I 2087/2016) [2018] NAHCMD 39 (26 February 2018)

Coram: OOSTHUIZEN J

Heard: 13 – 14 February 2018

Delivered: 26 February 2018

Flynote: Delivery of goods in terms of agreement.

Summary: Plaintiff delivered goods in terms of agreement. Defendant admits delivery but raised plea of non-joinder.

ORDER

Having heard counsel for the plaintiff and counsel for the defendant –

IT IS ORDERED THAT:

1. Defendant shall pay the plaintiff an amount of N\$108 140.96.
2. Defendant shall pay interest on the amount of N\$108 140.96 from 26 February 2018 to date of final payment.
3. Costs of suit, which costs shall include the costs of one instructed and one instructing counsel.

RULING

OOSTHUIZEN J:

[1] Plaintiff supplied and delivered beverages to the defendant on numerous occasions during 2013 and 2014.

[2] Prior to 22 July 2014 the defendant usually paid cash for the consignments ordered by him and delivered at Gweni Bar. The consignments invariable did not exceed the value of N\$15 000.00 to N\$20 000.00.

[3] Defendant would place its order and pay therefor and the consignments were delivered at plaintiff's premises and signed for in most instances by a lady working for defendant at his bar.

[4] On or about 22 July 2014 the defendant supplied an acquaintance of him, one Tangeni, with his account particulars with plaintiff in order to obtain a consignment from plaintiff.

[5] An order for the purchase and delivery of a consignment to defendant was admittedly made by Tangeni on behalf of and on account of defendant. This order and delivery is evidenced in exhibit "A3, 23" to the value of N\$108 140.96 (also annexure "B" to plaintiff's particulars of claim).

[6] Defendant, and not Tangeni, had the cash account with the plaintiff. Although defendant pleaded that Tangeni misrepresented himself fraudulently as his agent, it came out of the evidence and cross-examination of defendant that if there was misrepresentation and fraud committed by Tangeni it was perpetrated not concerning the plaintiff but towards the defendant.

[7] Tangeni did not pay the defendant as understood. There was no agreement between Tangeni and plaintiff.

[8] Defendant was requested to make payment by the plaintiff on 24 July 2014 and on occasion thereafter. According to plaintiff's evidence the defendant did not deny liability to pay the plaintiff.

[9] And indeed on 4 August 2014 the defendant signed an acknowledgement of debt in the claimed amount.

[10] Defendant however say that he signed the acknowledgement of debt under duress. This is denied by the witnesses of plaintiff.

[11] Defendant had the onus to prove the duress. It is clear that defendant signed acknowledgement for the amount of N\$108 140.96 which was due to plaintiff, due to the fact that delivery at defendant's premises was admitted on the aforesaid exhibit. Defendant did not prove the duress.

[12] Plaintiff (correctly so) does not insist on interest at the rate 2.5 % per month.

[13] Plaintiff only request interest on the amount of N\$108 140.96 from date of judgment to date of final payment.

[14] On the evidence presented in this case the court find that there indeed was an agreement as alleged by plaintiff and recorded in (a)1. of the daft pre-trial order, to wit

'the plaintiff and defendant entered into a partly written partly oral agreement on 22 July 2014 in terms of which the plaintiff would supply goods to the defendant and the defendant would affect payment to the plaintiff on a cash account.'

[15] The special plea of non-joinder raised by defendant is dismissed.

[16] Defendant did not mention or pursue its stance that the acknowledgement of debt infringes the provisions of the Credit Agreements Act, Act 75 of 1980, neither was any basis provided therefor.

[17] In the premises the following order is made:

17.1 Defendant shall pay the plaintiff an amount of N\$108 140.96.

17.2 Defendant shall pay interest on the amount of N\$108 140.96 from 26 February 2018 to date of final payment.

17.3 Costs of suit, which costs shall include the costs of one instructed and one instructing counsel.

GH Oosthuizen
Judge

APPEARANCES

PLAINTIFF: Jones-Ravenscroft
instructed by Engling, Stritter & Partners, Windhoek

DEFENDANT: Carolus
of Kadhila Amoomo Legal Practitioners, Windhoek