

REPUBLIC OF NAMIBIA



HIGH COURT OF NAMIBIA MAIN DIVISION, WINDHOEK

JUDGMENT

Case no: HC-MD-CIV-MOT-GEN-2017/00163

In the matter between:

PDS HOLDINGS (BVI) LTD

APPLICANT

and

MINISTER OF LAND REFORM

FIRST RESPONDENT

DANIEL NDJAI GERSON ZAIRE

SECOND RESPONDENT

GRACE INVESTMENTS 121 (PTY) LTD

THIRD RESPONDENT

GRACE INVESTMENTS 122 (PTY) LTD

FOURTH RESPONDENT

DEPUTY SHERIFF FOR THE DISTRICT OF WINDHOEK

FIFTH RESPONDENT

REGISTRAR OF DEEDS

SIXTH RESPONDENT

ATTORNEY GENERAL OF NAMIBIA

SEVENTH RESPONDENT

Neutral citation: *PDS Holdings (BVI) Ltd v Minister of Land Reform* (HC-MD-CIV-MOT-GEN-2017/00163) [2018] NAHCMD 129 (16 May 2018)

Coram: ANGULA DJP

Heard: 14 March 2018

Delivered: 16 May 2018

Flynote: Land – Section 17 (as amended by Act 1 of 2014) of Agricultural (Commercial) Land Reform Act, Act 6 of 1995 ('the Act') – Statutory obligation of the deputy-sheriff to offer the judicially attached agricultural commercial land to the State – The Minister's statutory obligations – Agreement concluded subsequent to the sale in execution not null and void but simply unenforceable pending the State exercising its preferent right in terms of section 17 of the Act or the Minister issuing a certificate of waiver.

Summary: The applicant obtained an order declaring an agricultural commercial farm executable (the farm) – After the sale in execution was advertised, the Minister of Land Reform informed the deputy-sheriff that the State intended to exercise its preferent right in terms of the Act, to purchase the farm – The deputy-sheriff proceeded to sell the farm to third parties at an auction without first formally offering it to the State – Thereafter the Minister continued to negotiate the purchase price of the farm with the registered owner to the exclusion of the deputy-sheriff who is the owner in terms of the amendment to the Act.

The applicant which as a vested interested party in the sale of the farm brought an application in which it sought certain orders, *inter alia*, declaring and confirming that the sale agreement between the deputy-sheriff and the purchasers at the public auction was valid. Alternatively, an order that the State purchase the farm at the price offered by the purchasers. In further alternative, in the event the State declining to purchase the farm at the said price, ordering the Minister to issue the deputy-sheriff with a certificate of waiver in terms of the Act.

The applicant further alleged that, as a party with a vested interest in the proceeds of a sale in execution of the farm, the delay by the Minister to exercise the State's preferent right, unduly prejudiced the applicant's right to execute its judgment through the sale of the farm which had been declared by the court to be executable in satisfaction of applicant's judgment.

It was contended on behalf of the Minister that the purchase agreement in respect of the sale in execution of the farm, concluded between the deputy-sheriff and the purchasers was null and void due to the fact that the farm had not been offered to the State for sale in terms of the Act and therefore the Minister was entitled to continue to negotiate the purchase price with the registered owner to the exclusion of the deputy-sheriff. Furthermore, while admitting the delay in finalising the sale process, it was denied on behalf of the Minister that the delay was due to the Minister's actions or omissions'.

Held that, the Minister has no legal right or statutory power to recognise the ownership of the farm by the registered owner contrary to the statutory provisions which vested the ownership of the farm in the deputy-sheriff and which empowers the deputy-sheriff to deal with the farm.

Held further that the deputy-sheriff was under a statutory obligation to formally offer the farm for sale to the State and that the deputy-sheriff's omission or failure to offer the farm to the State constituted a non-compliance with the peremptory provisions of the Act. The deputy-sheriff was thus ordered to formally offer the farm for sale to the State.

Held further that the contract of the sale of the farm between deputy-sheriff and the purchasers was not null and void as contended on behalf of the Minister: and that the contract was merely unenforceable until the deputy-sheriff has formally offered the farm for sale to the State and has thereafter been furnished with a certificate of waiver by the Minister or the State has decided to purchase the farm.

ORDER

1. The deputy-sheriff is ordered to formally offer Farm Rustig, No. 416, situated in the district of Windhoek for sale to the State within 10 days from the date of this order.

2. The Minister is to exercise the State's preferent right within 60 days from the date of receipt of the offer from the deputy-sheriff.
3. In the event of the State declining to exercise its preferent right, the Minister is ordered to forthwith issue a certificate of waiver to the deputy-sheriff.
4. The first respondent is ordered to pay the applicant's costs, such costs to include the costs of one instructed counsel and one instructing counsel.
5. The matter is removed from the roll and is considered finalized.

JUDGMENT

ANGULA DJP:

Introduction

[1] In this application the applicant seeks as the main relief, a declaratory order confirming that the sale of Farm Rustig, No. 416, situated in the district of Windhoek, ('the farm') to the third and fourth respondents (the purchasers) is valid. In the event of securing such order being granted, the applicant seeks an order directing the Registrar of Deeds to transfer and register the farm in the names of the purchasers; and that the second respondent as the registered owner of the farm be ordered to sign all the necessary documents to effect such transfer and registration, failing which the deputy-sheriff be so authorised.

[2] In the alternative to the main relief, the applicant seeks an order directing the Minister of Land and Reform ('the Minister') to exercise and finalise on behalf of the State, the preferent right vested in the State by section 17 of the Agricultural (Commercial) Land Reform Act, 1995 (Act No. 6 of 1995) ('the Act'). A further ancillary relief sought is that in the event the Minister were to exercise the said right and the

State purchases the farm, the Minister be ordered to pay to the deputy-sheriff an amount to the satisfaction of the applicant's judgment debt, which was the cause of the sale of the farm in execution.

Issues for determination

[3] The first issue for determination is whether in the absence or failure by the deputy-sheriff to have first offered the farm to the Minister pursuant to the provisions of section 17 of the Act, entitles the Minister to rather honour the offer by the registered owner and to continue to negotiate the purchase price of the farm with the registered owner.

[4] The next issue for determination in this matter is whether the agreement of sale of the farm concluded between the deputy-sheriff and the purchasers (third and fourth respondents) following a judicial sale in execution is null and void in that the sale agreement was concluded without the deputy-sheriff first offering the farm to the State pursuant to the provisions of section 17 of the Agricultural (Commercial) Land Reform Act, 1995 (Act No. 6 of 1995) ('the Act'). It is contented on behalf of the Minister, that the agreement is null and void.

[5] The application is opposed by the first and second respondents. The second respondent did not however file any answering affidavit or any other documents apart from the notice to oppose. The applicant nevertheless demands that the second respondent be ordered to pay costs occasioned by his opposition.

The Parties

[6] The applicant is a British Virgin Island registered company with its registered office situated at Bison Court, Road Town, Tortola, British Virgin Island.

[7] The first respondent is the Namibian Minister Land Reform ('the Minister') cited to these proceedings in his capacity as such, with his service address for process in this matter being the Office of the Government Attorney.

[8] The second respondent is Mr Daniel Zaire, a major male person currently residing in Olympia, a sub-urban in Windhoek.

[9] The third and fourth respondents are Namibian registered companies having their registered address Bonsai Secretarial Services, 2nd Floor, Room 48, Old Power Station Building, Windhoek.

[10] The fifth respondent is the Deputy-Sheriff for the district of Windhoek cited in these proceedings in his capacity as such, with his principal place of business situated at No. 422, Independence Avenue, Windhoek.

[11] The sixth respondent is the Registrar of Deeds, also cited to these proceedings in his capacity as such, having his Deeds Registry situated at 178 Robert Mugabe Avenue, Windhoek.

[12] The seventh respondent is the Attorney-General of Namibia cited in these proceedings in his capacity as such with his service address being the Office of the Government Attorney, Sanlam Centre, Independence Avenue, Windhoek.

Brief background

[13] The following facts are common cause: On 13 March 2014, this court delivered a judgment in favour of the applicant, against the second respondent for the payment 'of the amount of N\$3 000 000, plus interest on that amount at the rate of 20 per cent *per annum* calculated from date of summons to the date of final payment, with costs including costs of one instructing counsel and one instructed counsel.

[14] Pursuant to the delivery of the judgment, a writ of execution was issued against the second respondent's movable property. The deputy-sheriff could not find realisable movable property of the second respondent to satisfy the judgment debt and thus rendered a *nulla bona* return. The applicant then applied for an order that the second respondent's farm be declared executable in terms of rule 108 of the rules of this Court. The order was granted on 5 March 2015.

[15] The farm was sold on or about 14 July 2015 by the deputy-sheriff, in execution of the judgment, by public auction for a sum of N\$20 500 000 to the third and fourth respondents ('the purchasers').

[16] Thereafter the legal practitioners for the purchasers delivered to the applicant guaranteeing the payment of the purchase price of the farm. On the same day the deputy-sheriff received a letter from the Minister informing the deputy-sheriff that the State intended to exercise its preferential right in terms of the Act to buy the farm.

Applicant's case

[17] The applicant's deponent asserts that the applicant's rights have been prejudiced by the delay and lack of communication from the Minister as to the status of his intended exercise of the State's preferential right; that the applicant has a constitutional right to execute upon a valid judgment granted by this court in its favour against the second respondent in respect of the farm; and that the Minister was aware of the sale in execution of the farm but he did nothing as far as enforcing the State's preferential right as contemplated in section 17 of the Act.

[18] The deponent further points out that on 30 October 2015, in response to an earlier inquiry as to progress, the Minister responded by letter and stated that he had engaged the registered owner on the sale price of the farm but the parties were unable to agree on the price, therefore the matter had been referred to the Land Tribunal for the purpose of determining the purchase price. Thereafter two further letters were addressed to the Minister on 28 January 2016 and 2 March 2016 respectively. No

response had been received. In view of the delay, the deponent avers, the applicant was left with no other option other than to approach this court in order to ensure finality in its suit against the second respondent.

The Minister's opposition

[19] The opposing affidavit has been deposed to by the Permanent Secretary of the Ministry of Land Reform. He states that on 7 July 2015 a meeting was held between an official of the Ministry and the deputy-sheriff whereat the latter was advised that the Act has been amended and that such amendment obliges the deputy-sheriff to first offer, an agricultural commercial land being sold in execution, to the State.

[20] The deponent went on to say that contrary to the advice given, the deputy-sheriff proceeded on 14 July 2017, and sold the farm at a public auction. He submits that the sale in auction did not have the force and effect in law as the State had a preferential right. He points out that the relevant provision of the Act stipulates that any sale of commercial land by a deputy-sheriff in execution of a judgment shall be of no force and effect until the deputy-sheriff, as 'owner' has first offered such land for sale to the State.

[21] The deponent confirms that the registered owner (second respondent) made an offer to the Minister on 15 June 2015 to sell the farm to the State; that the Minister made a counter-offer thereafter; that the Minister did not accept the offer and informed the registered owner that in terms of the Act, if the registered owner does not accept the counter-offer the Minister will constitute a negotiation committee to negotiate the purchased price.

[22] The deponent points out further, with reference to the provisions of the Act, that in the event the registered owner and the negotiation committee fail to agree on the purchase price the registered owner should make an application to the Land Tribunal, within 60 days of such failure to agree on the purchase price, for the Land Tribunal to determine the purchase price; and that in the event the registered owner fails to make

such application to the Land Tribunal , he shall be deemed to have accepted the Minister's counter-offer.

[23] Finally the deponent admits that there has been a delay in acquiring the farm but denies that it has been due to the Minister's action or omission. He lays the blame at the door of the deputy-sheriff and the registered owner.

Applicable laws

[24] The applicable statutory provisions to the facts in the present matter are sections 17(1) and (2) of the Act as amended. Sub-section (1) stipulates that the State shall have a 'preferent right' to purchase agricultural commercial land whenever any owner of such land intends to alienate such land. Sub-section (2) stipulates that no agreement of alienation of agricultural land entered into between the owner of such land shall be of any force and effect until the owner of such land has first offered such land for sale to the State; and has been furnished with a certificate of waiver in respect of such land.

[25] Prior to 2014 the State's preferent right was excluded in respect of sale in execution of agricultural commercial land. However during 2014, through Act 1 of 2014 the definition of 'owner' of a commercial agricultural land was amended to include a deputy-sheriff. Since then the definition 'owner' means 'in respect of a property attached in terms of an order of court, the deputy-sheriff or messenger of the court, as the case may be'. This means that, henceforth, commercial agricultural land being sold at an auction by a deputy-sheriff or a messenger of the court pursuant to writ of execution in satisfaction of a judgment, the deputy-sheriff or the messenger of the court is deemed to be the 'owner' and is therefor under a statutory obligation to first offer such land for sale to the State.

Submissions on behalf of the applicant

[26] It is submitted on behalf of the applicant, that the intention of the legislature by including the deputy-sheriff in the definition of 'owner' of a commercial agricultural

immovable property under judicial attachment, which obligates the deputy-sheriff to first offer it to the State at a sale in execution, means that any purported agreement of sale entered into by the registered owner with any prospective purchaser in respect of property under attachment, would be of no force and effect.

[27] It is further argued that the registered owner has no legal standing to negotiate the price for the sale of the farm with the Minister; that despite the fact that the Minister was fully aware that the deputy-sheriff was the owner of the farm, he nevertheless engaged the deputy-sheriff to negotiate the purchase price of the farm. It follows therefore in the present matter, so the argument goes, that any purported agreement of sale between the Minister and the registered owner, to sell the farm to the State would fall foul of the provisions section 17(2) of the Act. This is because in terms of the Act the deputy-sheriff is the 'owner' and not the registered owner.

Submissions on behalf of the Minister

[28] It is submitted on behalf of the Minister that section 17 of the Act imposes an obligation on an owner of commercial agricultural land, who forms the intention to sell his land, to first offer such land for sale to the State. Where the State is not given an opportunity to exercise its preferential right in terms of the Act, and the owner offers such land for sale to a prospective purchaser other than the State and has already entered into an agreement of sale, such agreement would be null and void. Counsel submits that 'it is a well-settled principle of our law that an agreement entered into in contravention of the common law or legislation is not enforceable and is void'. In support of this proposition counsel relies on *Scheirhout v Minister of Justice*¹.

[29] Counsel points out with reference to the fact in the present matter that the registered owner's intention to sell the farm came to the knowledge of the Minister in June 2015 when the registered owner offered to sell the farm to the State. The Minister was not aware of the judicial attachment when he made a counter-offer.

¹ 1925 AD 417

[30] It is further argued on behalf of the Minister that even though it is accepted that the deputy-sheriff was the owner of the of farm, he never offered it to the State for sale; and that the deputy-sheriff was made aware prior to the public auction that the sale at the public auction would be contrary to the provisions of the Act.

[31] It is therefore finally submitted on behalf of the Minister that the agreement of sale concluded between the deputy-sheriff and the purchasers is null and void. Counsel relies for this submission on the judgment in *Katjiuanjo v Willemse*² where it was held that any alienation of agricultural land must first be offered to the State by the owner before the owner can offer it to a private individual. Otherwise such agreement with the private individual would be null and void.

Analysis and conclusions

[32] Before I proceed to consider and analyses the law and the respective arguments advanced on behalf of the parties, it would appear to me that a judgment of the Supreme Court, in point on the present dispute, has escaped the attentions of both counsel for the parties. That is the judgment in the matter of *Locke v van der Merwe*³. The dispute in that matter concerned the validity agreement entered into between the parties for the sale of a farm. The agreement was made subject to the suspensive condition that the buyer, who was a foreign national, obtained Namibian citizenship within five years. *Locke* sought an order to interdict the seller from selling the farm to third parties. The court *a quo* in that matter dismissed the application based on the provision of section 17(2), holding that the agreement had been hit by the provision of section 17(2) and did not create any right or obligations between the parties. Thus it was void and unenforceable.

[33] On appeal the Supreme Court held that a contractual relationship for the sale of agricultural land was not forbidden by s 17(2) of the Act; that the contract was not null and void and of no force or effect, it was merely unenforceable until the owner of the

² (I 3464/2011) [2012] NAHCMD 5 (26 September 2012).

³ 2016 (1) NR 1 (SC) p1 18H - 19F.

land had offered the land for sale to the State and had been furnished with a certificate of waiver in respect of the land.

[34] It would appear to me that the starting point for consideration is the concession made by counsel for the Minister in the heads of argument based on what was said by the court in the *Katjiuanjo (supra)* matter, cited by counsel for the Minister, where it was held that where immovable property of the judgement debtor has been judicially attached, such immovable property shall vest in the deputy-sheriff, who shall be judicially authorised to sell such immovable property in sale in execution and when selling such property, the deputy-sheriff will be acting as 'executive of the law'. Counsel points out that in the present matter 'it is the deputy-sheriff's duty to alienate Farm Rustig in terms of the judicial order, hence he was the 'owner' of Farm Rustig and was legally obligated to offer Farm Rustig to the first respondent'. I respectfully agree.

[35] I am of the considered view that once it is accepted, as it should be, that the deputy-sheriff is the 'owner' of the farm in terms of the Act and furthermore that the deputy-sheriff is the only person judicially authorised to sell the farm, it follows as a matter of logic and law that it would be impermissible for the Minister to ignore or bypass the deputy-sheriff and continue purporting to negotiate the purchase price of the farm with the registered owner.

[36] It is common cause that by the letter dated 14 July 2015, the Permanent Secretary addressed a letter to the deputy-sheriff, copied to the applicant's legal practitioners, in which he stated amongst other things, that 'the Minister shall therefore proceed with the acquisition of the subject farm and has to that effect delegated a Valuer to inspect the farm to be able to determine the value thereof'. Ordinarily, in human understanding this communication would constitute an admission that the Minister has accepted that an offer was available to him to exercise the preferent right on behalf of the State either to purchase or decline the acquisition of the farm on behalf of the State. But that is, unfortunately not what the Act prescribes. The Act stipulates that 'the owner of such land has first offered such land for sale to the State'. This in my view requires the owner to act and offer the land to the State. It is not something which

can be presumed or inferred. The Act imposes an obligation on the owner to make an offer to the State.

[37] It is common cause in the present matter that the deputy-sheriff did not formally offer the farm to the Minister for the latter to exercise the State's preferential right. It is further common cause that a meeting was held between an official from the Ministry and the deputy-sheriff regarding the proposed sale in execution of the farm by the deputy-sheriff whereat the official on behalf of the Minister drew the attention of the deputy-sheriff to the provision of the new amended provision of the Act, which requires the deputy-sheriff to first offer the farm to the State. Furthermore, correspondence was also exchanged between the parties regarding the sale of the farm. It would therefore appear that the public auction and the ultimate sale in execution did not take place while the Minister was blissfully unaware about the imminent sale of the property. The Minister adopted the attitude that the deputy-sheriff's action was null and void.

[38] I am however of the considered view that, notwithstanding the Minister's awareness or knowledge that the deputy-sheriff intended to sell the farm in execution and the apparent Minister's action to exercise the State's option to purchase the farm, the deputy-sheriff did not execute the obligation imposed upon him by the Act, namely to formally offer the farm for sale to the State. Furthermore, the deputy-sheriff was under a statutory obligation to formally offer the farm for sale to the State. It is common cause that the deputy-sheriff did not do so. Such omission or failure constitutes a non-compliance with a peremptory provision of the Act and cannot be countenanced.

[39] I am of the further view, that mere fact that the deputy-sheriff has failed to offer the farm to the State did not entitle the Minister to recognise the registered owner and to negotiate the purchase price for the farm with him. The Minister has no legal right or statutory power to recognise the ownership of the farm by the registered owner contrary to the statutory provisions which vest the ownership of the farm in the deputy-sheriff and which empowers the deputy-sheriff to deal with the farm.

[40] I have therefore arrived at the conclusion that, on the facts of this matter, the deputy-sheriff, as an 'owner' of the farm has failed to offer the farm for sale to the State. Notwithstanding the fact that the Minister had in writing expressed the State's intention to acquire the farm, it did not relieve the deputy-sheriff from his statutory obligation to formally offer the farm to the State.

[41] The foregoing conclusions, in my view, constitute an answer to the first issue identified for determination at the commencement of this judgement.

[42] I next proceed to consider the second issue, that is, whether the sale agreement entered into between the deputy-sheriff and the purchasers is null and void in that the sale agreement was concluded without the deputy-sheriff first offering the farm to the Minister pursuant to the provisions of section 17 of the Act.

[43] The Supreme Court judgment in the *Locke* matter to which reference has been made earlier, in my view serves as an absolute answer to this question. The legal position was clearly stated by the highest court in the land that the contractual relationship for the sale of land is not forbidden by section 17 of the Act; that the contract is not null and void or of no force or effect. The contract is merely unenforceable until the owner of the land has offered the land for sale to the State and has been furnished with a certificate of waiver in respect of the land.

[44] Applying the above principle to the facts of the present matter, it follows therefore that the contract of the sale of the farm between the deputy-sheriff and the purchasers is not null and void as contended on behalf of the Minister: the contract is merely unenforceable until the deputy-sheriff has formally offered the farm for sale to the State and has thereafter been furnished with a certificate of waiver by the Minister. This conclusion raised the question whether the applicant should be granted the relief it seeks. I consider the question below.

Should the applicant be granted all the relief it seeks?

[45] The applicant seeks, as the main relief, an order declaring and confirming that the farm has been sold to the purchasers and further directing the Registrar of Deeds to transfer the farm to the purchasers. In the first alternative, the applicant seeks an order directing the Minister to exercise the State's preferential right to purchaser the farm within sixty days as stipulated by the Act; and that the State acquires the farm for the amount of N\$20.5 million or such other amount as the court may deem fit. In the second alternative, and in the event the Minister fails to exercise the State's preferential right within the prescribed time period, the applicant seeks an order directing the Minister to issue the certificate of waiver to the deputy-sheriff.

[46] I found earlier in this judgment that the deputy-sheriff has not formally offered the farm to the State for the latter to exercise its preferential right. In order to fully comply with the provisions of the Act, I propose to order the deputy-sheriff to make a formal offer to the State for the sale of the farm. Counsel for the applicant conceded in his heads of argument, correctly and wisely in my view, that an opposite order in the circumstances would be an order to compel the Minister to exercise the State's preferential right within the time period stipulated by the Act and to communicate such election to the deputy-sheriff, leaving out the purchasers and the registered owner.

[47] I am of the view the proposal embodied in the concession, would be the proper approach as it would accord with the statutory provisions and the legal rights that currently prevail between the deputy-sheriff and the Minister in respect of the farm. I am saying this for the reason that the deputy-sheriff, as the statutory owner of the farm, has statutory obligation which imposes a positive duty on him to offer the farm to the State. The State on the other hand has a statutory right to be offered the farm for sale by the deputy-sheriff. Should the State elect to purchase the farm then the purchase price will be negotiated between the deputy-sheriff and the Minister, failing agreement on the purchase price, the process stipulated by the Act will be followed. In the event the State elects not to purchase the farm, the Minister will then be obliged to issue a certificate of waiver to the deputy-sheriff.

Costs

[48] It is submitted on behalf of the applicant that the conduct of the Minister and the registered owner had left the applicant with no other option then to bring this application to seek the relief it seeks; and that the Minister inordinately delayed in finalizing the process or to meaningfully communicate with the applicant. In this connection the deponent on behalf of the applicant points out that the Minister advised the deputy-sheriff during July 2015 that the State intends to exercise its preferential right to purchase the farm; that on 28 August 2015, the deputy-sheriff provided the Minister with all the documentation pertaining to the farm, including the court order declaring the farm executable.

[49] Thereafter on 19 October 2015, the applicant's legal practitioner addressed a letter to the Minister enquiring whether he still intended to exercise the State's right to purchase the farm. On 30 October 2015, the Minister responded advising that he had engaged the register owner; that they have failed to agree on the purchase price and that the matter would be referred to the Land Tribunal to determine the purchase price. Thereafter no feedback was received from the Minister.

[50] The applicant's deponent further points out that thereafter and on 28 January 2016, the legal practitioner for the applicant addressed a further letter to the Minister enquiring about the status of the matter. A follow-up letter was again addressed to the Minister on 2 March 2016. No response was received to both letters. For these reasons, it is submitted on behalf of the applicant, that it had no option but to bring this application.

[51] The Permanent Secretary admits, correctly in my view, that there has been a delay in the process but denies that such delay was due to the Minister's actions or omissions.

[52] I am of the view that the Minister, as the person entrusted by parliament with the administration of the Act, should be conversant with its application and those who advise him should be familiar with the case-law such as the *Locke* case. The Minister should have known that it was not permissible for him to continue to deal with the registered owner once he became aware that the deputy-sheriff became the 'owner'. He had to deal with the deputy-sheriff. The Act stipulates the time periods within which certain actions must be taken which appears not to have been adhered to by the Minister or the Permanent Secretary. Despite communicating the State's intention to the deputy-sheriff to purchase the farm, the Minister failed to make an offer or to issue a certificate of waiver. In my considered view, had the provisions of the Act been properly observed and followed, this application might not have been necessary.

[53] Finally, in my view, the Minister failed to meaningfully communicate with the applicant regarding the purchase of the farm. The Minister was made aware of the applicant's vested interest in the farm to satisfy his judgment either through the sale of the farm or the deduction of the value of his judgment debt from the purchase price.

[54] Taking all the above factors into account, I am of the considered view that the applicant was entitled to bring this application and as a result is entitled to be compensated for its costs.

[55] In view of the fact that the second respondent did not file further papers other than the notice to oppose, I do not consider it to be appropriate that he be ordered to share the costs with the first respondent. In the exercise of my discretion, I decline the applicant's plea that the second respondent be ordered to pay the applicant's jointly and severally with the first respondent.

[56] In the result I make the following order:

1. The deputy-sheriff is ordered to formally offer Farm Rustig, No. 416, situated in the district of Windhoek for sale to the State within 10 days from the date of this order.

2. The Minister is to exercise the State's preferent right within 60 days from the date of receipt of the offer from the deputy-sheriff.
3. In the event of the State declining to exercise its preferent right, the Minister is ordered to forthwith issue a certificate of waiver to the deputy-sheriff.
4. The first respondent is ordered to pay the applicant's costs, such costs to include the costs of one instructed counsel and one instructing counsel.
5. The matter is removed from the roll and is considered finalized.

H Angula
Deputy-Judge President

APPEARANCES

APPLICANT: J A N STRYDOM
instructed by Theunissen, Louw & Partners, Windhoek

FIRST RESPONDENT: L TIBINYANE
of Government Attorney, Windhoek

SECOND RESPONDENT: S NAMANDJE
of Sisa Namandje & Co. Inc., Windhoek