

“ANNEXURE 11”
Practice Directive 61

IN THE HIGH COURT OF NAMIBIA

Case Title: Ronald Mosementla Somaeb // Standard Bank Namibia Ltd & 2 Others	Case No: HC-MD-CIV-MOT-GEN-2017/00202
	Division of Court: High Court
Heard before: Honourable Mr Justice Angula, Deputy Judge-President	Date of hearing: 19 June 2018
	Delivered on: 7 November 2018
Neutral citation: <i>Somaeb v Standard Bank Namibia Ltd</i> (HC-MD-CIV-MOT-GEN-2017/00202) [2018] NAHCMD 354 (7 November 2018)	
Result on merits:	
The order: Having heard Mr van Vuuren , counsel for the first respondent, and having read the documents filed of record: IT IS ORDERED THAT: 1. The application is dismissed. 2. The applicant is ordered to pay the costs and such costs to include costs of one instructing counsel and one instructed counsel. 3. The matter is removed from the roll and is considered finalised.	
Reasons for orders:	
[1] There are many cases pending before this court in which the applicant seeks relief against the first respondent in respect of the same subject matter. [2] In this matter the applicant sought an order prohibiting the first respondent from evicting him from his erstwhile property, being Erf 4785, Extension 15, Katutura, Windhoek (‘the property’), and directing the	

respondents to stay the writ of execution dated 18 May 2017, pending hearing and outcome of *Ronald Mosementla Somaeb // The Chief Justice & Another*, Case No. HC-MD-CIV-MOT-GEN-2017/00102 and *August Maletzky & 13 Others // The Government of the Republic of Namibia & 27 Others*, Case No. HC-MD-CIV-MOT-GEN-2017/00148.

[3] It appears from the record that, papers in this application were served on the respondents on 4 July 2017. In terms of the notice of motion, the respondents were given 14 days to enter appearance to defend calculated days from the date of service of the papers upon them. However on 7th of July 2017, before the dies had expired, the applicant set the matter down for hearing. The matter came before Usiku J in motion session who removed it from his roll due to premature set down.

[4] Thereafter the first respondent filed its notice to oppose the application on 10 July 2017.

[5] The matter was thereafter assigned to me, as managing judge on 28 July 2017. It is to be noted that the application was brought in the normal course and not one of urgency.

[6] After the parties have exchanged their pleadings, the matter was scheduled for hearing for 19 June 2018. Judgment was reserved for delivery on 7 November 2018.

Writ in *Ronald Mosementla Somaeb vs Standard Bank Namibia Ltd & 2 Others*, Case No. HC-MD-CIV-MOT-GEN-2017/00202 sought to be stayed

[7] The first respondent issued summons against the applicant, to which the applicant failed to enter an appearance to defend. Subsequently, on 22 July 2010, the Registrar of the High Court granted default judgment in favour of the second respondent.

[8] On 11 August 2010, a warrant of execution was issued against the property of the applicant, being Erf 4785 (a portion of Erf 8446), Katutura, Extension 15, Windhoek, Namibia ('the property'). Thereafter, the first respondent purchased the property and subsequently registered in the name of the first respondent.

[9] Despite the property being registered in the name of the first respondent, the applicant refused to vacate the property and as a result, the first respondent instituted action in *Standard Bank Namibia Ltd // Ronald Mosementla Somaeb*, Case No. I 1912/2013 for eviction of the applicant from the property and the application was successful through an application for summary judgment, was granted on 22 July 2010.

[10] The applicant then appealed against the summary judgment. The appeal was struck from the roll of the Supreme Court for the reasons not relevant for the present proceedings.

[11] Thereafter the applicant instituted an action in this court against the Chief Justice, in his capacity as head of the Judiciary under *Ronald Mosementla Somaeb // The Chief Justice & Another*, Case No. HC-MD-CIV-MOT-GEN-2017/00102 in which he sought for an order, in the first place, directing the Chief Justice 'to deem it just and expedient that the applicant's application in the Supreme Court dated 2 March 2017, should be deemed to be an application brought pursuant to and in consequence of the Supreme Court having decision (power) to exercise its review jurisdiction in terms of section 16(1) and (2) of the Supreme Court Act, 1990'. In the second place, directing the second respondent to deliver telephone calls records and cellphone calls records of the deputy registrar and assistant registrar of the Supreme Court between 7 and 8 March 2016 to both the court and the applicant. In the third place, directing that the first order sought, operates as an interim interdict pending the hearing of the review application, which is, either pending before this court or the Supreme Court. That application was struck from the roll on the ground that this court has no jurisdiction to order the Supreme Court how it regulate its proceedings. The applicant then appealed against the ruling of this court in that matter. His appeal was again dismissed. Therefore that case is finalised and is not pending.

[12] It appears from the record that, in the meantime, the first respondent instituted ejectment proceedings against the applicant on the strength of the summary judgment granted in its favour on 22 July 2010. On the applicants own version a writ of ejectment was issued on 18 May 2017. According to the return of service in respect of the writ of ejectment, the applicant was ejected from the property by the Deputy-Sherriff on 27 July 2017.

[13] Given the fact that these proceedings were served on the first respondent on 4 July 2017 and the order was only moved or applied for on 19 June 2018 long after the applicant had already been ejected from the property, on the strength of the writ of execution which the applicant sought to have stayed in the present proceedings, it is impossible for the court to do so for the reason that the applicant has already been evicted from the property. The order sought is therefore incompetent.

[14] It therefore follows that by the time the matter was heard on 19 June 2018, both the writ of ejectment of 18 May 2017 which the applicant sought to have stayed and the ejectment then he sought to have prohibited the respondent from ejecting him from the property, had already been executed in that the applicant had been already evicted from the property.

[15] In light of those undisputed facts, the court is not in a position to order a stay of the writ, which had

already been executed, or prohibit the ejection of the applicant from the property, which had already taken place. Therefore the relief which the applicant seeks is academic.

Stay of proceedings pending *August Maletzky & 13 Others // The Government of the Republic of Namibia & 27 Others*, Case No. HC-MD-CIV-MOT-GEN 2017/00148

[16] The applicant seeks an order to stay of the present proceedings pending the outcome of the proceedings in the above case. The record of that case was not placed before this court. It would appear that in that matter the applicant together with other persons brought an application in which they seek an order to declare all the default judgments granted by the Registrar of this court from 1990 to 2010 *null* and *void* due to the fact that the Registrar and the Clerk of the Magistrate's Court are not judicial officers. It would further appear that that application was heard during July 2018 and judgment was reserved for delivery in March 2019.

[17] In *Mouton v Goaseb*¹, the court had occasion to consider the application for leave to stay eviction proceedings on the ground that there were pending proceedings before the Supreme Court. Masuku J said the following at paragraph [13]:

'[13] It thus becomes clear that applications for stay of proceedings are not granted lightly and merely for the asking. It would seem that exceptional circumstances must be proved to be extant before the court may resort to this measure. I would think this is because once legal proceedings are initiated, it is expected that they will be dealt with speedily and brought to finality because tied in them are rights and interests of parties, which it is in the public interest to bring to finality without undue delay. Applications for stay have the innate consequence of holding the decisions and the rights and interests of the parties in abeyance. It is for that reason that these applications are granted sparingly. It would appear to me, in line with the overriding principles of judicial case management, the bar for meeting the requirements for stay of proceedings is even higher as the application impacts on the completion of the case, time expended on the application itself (not to mention the time to be waited during the time when the stay operates if successful) and obviously, the issue of costs.'

[18] From the foregoing it is made plainly clear that an application for a stay of proceedings is not granted lightly and for the mere asking. Exceptional circumstances must be proven to exist and to justify the court to grant an order to stay proceedings.

[19] In the present matter the property was already transferred to the first respondent in 2010 and the applicant was already evicted in 2017. That process is irreversible and therefore there is no point of staying

¹ (14215-2011) [2015] NAMHCMD 257 (28 October 2015).

those proceedings. In any event the proceedings have already been concluded. The effect of the pending judgment can only be prospective and will by no means have retrospective effect. It follows therefore that the order sought is incompetent and cannot be granted.

Costs

[20] On the facts of this matter, the court is of the view that the applicant should be ordered to pay the costs of this application. Reasons being: the applicant was fully aware of his ejection from the date the first respondent obtained the order against the applicant for his eviction from the property. Secondly, the applicant knew from 18 May 2017 the date the writ was issued, that he was being ejected from the property however he launched this application only in July 2017 and failed to explain or furnish any reasons for his delay to have launched the application soon after May 2017. The applicant further persisted with the application knowing very well that he had been evicted from the property on 27 July 2017.

[21] The court is satisfied that the applicant's conduct constitutes an abuse of court process and for that reason, he shall bear the costs of this application.

Judge's signature:	Note to the parties:
Counsel:	
Applicant(s)	Respondent(s)
In person	A Van Vuuren Instructed by Behrens & Pfeiffer, Windhoek