

“ANNEXURE 11”

**IN THE HIGH COURT OF NAMIBIA**

<b>Case Title:</b> Namibia Financial Institutions Supervisory Authority v Hendrik Christian T/A Hope Financial Services and Another	<b>Case No:</b> HC-MD-CIV-MOT-GEN-2020/00138
	<b>Division of Court:</b> High Court, Main Division
<b>Heard before:</b> Honourable Justice Herman Oosthuizen	<b>Date of hearing:</b> 28 May 2020
	<b>Delivered on:</b> 19 June 2020
<b>Neutral citation:</b> <i>Namibia Financial Institutions Supervisory Authority v Hendrik Christian T/A Hope Financial Services</i> (HC-MD-CIV-MOT-GEN-2020/00138) [2020] NAHCMD 237 (19 June 2020)	
<b>Result on merits:</b> Application succeeds.	
<b>The Order:</b>  Having heard <b>Mr Nekwaya</b> , counsel for the plaintiff, and <b>Mr Hendrik Christian</b> , defendant in person:  <b>IT IS ORDERED THAT:</b>  1. Applicant's non-compliance with the forms and service provided for in the Rules of the above Honourable Court is condoned and the hearing of the application as one of urgency as contemplated by Rule 73, is approved.  2. Pending the hearing, determination and finalization of the review of an allocator by the Taxing Master instituted by the applicant in terms of Rule 25(3) of the Supreme Court Rules (the review application), the execution of the cost order granted by the Supreme Court and all subsequent execution proceedings instituted under case number SA	

36/2016 is hereby stayed.

3. The respondents are hereby interdicted and restrained from enforcing a writ of execution dated 26 March 2020 and /or attaching any of the applicant's properties pending the hearing, determination and finalisation of the aforementioned review application for allocatur issued by the Taxing Master dated 17 March 2020 under case number SA 36/2016.

4. First respondent shall pay the costs of suit of instructing counsel of applicant.

**Reasons for Orders:**

1. Applicant, NAMFISA, applied for staying execution of an allocatur by the Taxing Master consequent to a cost order in favour of respondent, Hendrik Christian t/a Hope Financial Services, pending review in terms of Rule 25(3) of the Supreme Court Rules. The cost order was for disbursements by an unrepresented litigant.

2. The application is further for interdicting and restraining the respondent from enforcing a writ of execution dated 26 March 2020 pending review of the allocatur dated 17 March 2020.

3. The application was brought on an urgent basis due to respondent's relentless attempts to execute the allocatur in his favour despite the time for instituting the review application in terms of the aforesaid Rule 25(3) not having expired.

4. According to the respondent (Mr Christian) the High Court does not have jurisdiction because the cost order was granted by the Supreme Court. In so far as the High Court have no jurisdiction to alter the cost order of the Supreme Court, Mr Christian is correct. In so far as the Supreme Court is not a court of first instance to stay and interdict execution of an allocatur made consequent to the costs order pending review of the allocatur under the Supreme Court Rules, Mr Christian is wrong. Review is sought on an allocatur not made by the Supreme Court but by an administrative official. The review is in the domain of a Supreme Court Judge.

5. The High Court's intervention is sought because the Supreme Court does not hear

and adjudicate on urgent applications for staying and interdicting execution of allocaturs pending review thereof by it.

6. Mr Christian also attacked the authority of the acting CEO of Namfisa to institute the urgent application and the authority of Namfisa's lawyers to act on its behalf.

7. Mr Christian relies on Section 5(2) of the NAMFISA ACT, ACT 3 of 2001, for his submission that the acting CEO did not have the necessary authority to depose to the founding affidavit and to bring the application. In my view the said section does not find application in this (urgent) application. See the authority attached to the replying affidavit of the CEO.

8. The review of the allocatur was brought timeously. The 21 days did not expire. *Vide* State of Emergency Covid-19 Regulations per Proclamation No 9 of 2020 published 28 March 2020 and Directions Relating to Judicial Proceedings under Government Gazette No 7160 of 31 March 2020. The period 28 March 2020 to 4 May 2020 is therefore excluded. The review of the allocatur was filed with the Registrar of the Supreme Court on 14 May 2020.

9. The application was urgent and necessary in order to preserve the effective review of the Supreme Court.

10. Mr Christian acted alone and in person in order to obtain execution of an allocatur consequent to a cost order in his favour. Covid-19 emergency measures intervened in the running of the 21 days for review. The court allowed time to the parties to try and settle the matter amicably and Mr Christian has heeded the Court's caution regarding the sub-judice principle. Applicant was represented by two admitted legal practitioners, one instructing and one instructed. Costs follow the result, but the costs of only instructing counsel shall be allowed.

11. In the result the following orders are made:

[11.1] Applicant's non-compliance with the forms and service provided for in the Rules of the above Honourable Court is condoned and the hearing of the application as one of

urgency as contemplated by Rule 73, is approved.

[11.2] Pending the hearing, determination and finalization of the review of an allocatur by the Taxing Master instituted by the applicant in terms of Rule 25(3) of the Supreme Court Rules (the review application), the execution of the cost order granted by the Supreme Court and all subsequent execution proceedings instituted under case number SA 36/2016 is hereby stayed.

[11.3] The respondents are hereby interdicted and restrained from enforcing a writ of execution dated 26 March 2020 and/or attaching any of the applicant's properties pending the hearing, determination and finalisation of the aforementioned review application for allocatur issued by the Taxing Master dated 17 March 2020 under case number SA 36/2016.

[11.4] First respondent shall pay the costs of suit of instructing counsel of applicant.

<b>Judge's signature:</b>	<b>Note to the parties:</b>
<b>Counsel:</b>	
<b>Plaintiff(s)</b>	<b>Defendant(s)</b>
Mr E Nekwaya Instructed by LorentzAngula Inc.	Mr Hendrik Christian (In person)