

**REPUBLIC OF NAMIBIA**



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

**RULING I.T.O. PRACTICE DIRECTIVE 61**

CASE NO. HC-MD-CIV-ACT-CON-2017/03874

In the matter between:

**NEDBANK NAMIBIA LIMITED**

**APPLICANT**

and

**RENFRED MICHAEL MULLER**

**1<sup>ST</sup> RESPONDENT**

**JUNE GESINA MULDER**

**2<sup>ND</sup> RESPONDENT**

**Neutral Citation:** *Nedbank Namibia Limited v Muller* (HC-MD-CIV-ACT-CON-2017/003874) [2020] NAHCMD 29 (30 January 2020)

**Coram:** Masuku J

**Heard on:** 31 October 2019

**Delivered:** 30 January 2020

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**ORDER**

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1. The following property is hereby declared specially executable:

CERTAIN : Erf No. Rehoboth A 413

SITUATE : in the Town of Rehoboth  
Registration Division "M"  
Hardap Region

MEASURING: 1155 (One One Five Five) Square Metres;

HELD BY : Land Title No. A 413

SUBJECT : To all the conditions contained therein

2. The respondents are to pay the costs of the application.
3. The matter is removed from the roll and is regarded as finalised.

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### REASONS FOR THE ORDER

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Masuku, J

[1] Serving before the court is an application in terms of rule 108 of the High Court Rules of Namibia wherein the applicant seeks an order declaring:

CERTAIN : Erf No. Rehoboth A 413

SITUATE : in the Town of Rehoboth  
Registration Division "M"  
Hardap Region

MEASURING: 1155 (One One Five Five) Square Metres;

HELD BY : Land Title No. A 413

SUBJECT : To all the conditions contained therein specially executable.

[3] The applicant and the respondents entered into two written loan agreements on 16 May 2013 and 09 July 2013 respectively in terms of which the applicant lent and advanced money to the respondents.

[4] The present proceedings were then instituted as a result of the respondents' failure to comply with their repayment obligations in terms of the loan agreement. According to the applicant, at the date of inception of this application, the respondents were indebted to the former in the amount of N\$ 869 595.30.

[5] The respondents opposed the application on grounds that will be dealt with in the paragraphs that follow.

[6] At the hearing of the matter, the applicant submitted that the respondents seek an indulgence for an indefinite period of time within which to settle the indebtedness, particularly, for the commencement of certain sports tours outside of Namibia. According to the applicant, the respondents do not provide any contracts with third parties to support their projected income from the said tours or, that the business' financial status is sound and that the first respondent would be able to resume paying.

[7] The applicant went on to submit further that there is no evidence on record that the respondents will be able to satisfy the judgment debt. According to the applicant, without any supporting agreements, the proposed income is hypothetical and speculative<sup>1</sup> and that therefore, in the circumstances of this case, there exists no alternative means which are reasonable and less drastic to settle the debt. The applicant went on to further submit that, where no such alternative means are apparent, the court must then declare the immovable property executable.<sup>2</sup>

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<sup>1</sup> Applicant's heads of argument para 27.

<sup>2</sup> First National Bank of Namibia v Musheti [2017] NAHCMD 304 (18 October 2017).

[8] It was the applicant's further contention that even if the court were to make a further enquiry into this case, that it could only have regard to legally relevant circumstances.<sup>3</sup>

[9] The first respondent submitted the said property was his primary home in which he lives with his wife, the second respondent, as well as their two minor children; that in the circumstances, the best option for the parties would be to stay the execution and wait until the first respondent, through his company, in the form of sports tours to amongst other countries, Japan, is able to generate enough income to pay the arrears as well as the monthly instalments. He further submitted that his situation was destitute and implored the court to consider other less drastic means than execution.

[10] It is worth noting that the dates of the proposed tours have all gone by and there is currently only one tour date remaining, that is for the period from 04 – 14 April 2020. According to the first respondent, there was a possibility of receiving a lump sum for the 2020 tour sometime in September 2019 but at the time of the hearing of the matter in November 2019 there had been no payment in an effort to pay off the outstanding amount.

[11] Where an order declaring bonded property executable is to be made, the court takes into consideration whether the immovable property concerned is a primary home of a judgment debtor. As a result, substantial compliance with Form 24 (requiring that service be personal service) would suffice.<sup>4</sup> Notwithstanding this, the court must also consider all relevant circumstances including 'less drastic measures than a sale in execution.'<sup>5</sup>

[12] The notion that a debtor's property should be available to satisfy its debts is universally accepted, and this is the case even where residential property is concerned.

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<sup>3</sup> Standard Bank Namibia Limited v Heita [2018] NAHCNLD 137 (04 December 2018).

<sup>4</sup> Standard Bank Namibia v Shipila and Others (SA 69/2015) [2018] NASC 395 (06 July 2018).

<sup>5</sup> Futeni Collections (Pty) Ltd v De Duine (I 3044-2014) [2015] NAHCMD 119 (27 May 2015).

[13] As rightly submitted by the applicant, the respondents' opposition is based on, the commencement of certain sporting tours, that is, what might or might not happen<sup>6</sup> and the happening of which cannot be reasonably estimated. The court thus finds no legally binding reason why the relief sought by the applicant should not be granted.

[14] It may be the case that this order leaves the first respondent in dire circumstances, but there are in the present circumstances, no other less drastic measures open to the court to apply.

[15] For the forgoing reasons, the court makes the order as aforementioned.

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T.S Masuku  
Judge

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<sup>6</sup> Standard Bank Namibia Limited v Africa (I 977/2014) [2019] NAHCMD 22 (13 February 2019) at para 34.

## APPEARANCES:

APPLICANT: M. Kuzeeko  
Of Dr. Weder, Kauta & Hoveka Inc. Windhoek.

RESPONDENTS: R. Muller  
Respondent in person.