

“ANNEXURE 11”

Practice Directive 61

**IN THE HIGH COURT OF NAMIBIA**

<b>Case Title:</b> AMIR ISMAIL // MOHAMED ARAR & ANOTHER	<b>Case No:</b> HC-MD-CIV-ACT-CON-2017/01623
	<b>Division of Court:</b> HIGH COURT (MAIN DIVISION)
<b>Heard before:</b> HONOURABLE MR JUSTICE ANGULA, DEPUTY JUDGE-PRESIDENT	<b>Date of hearing:</b> 17 JUNE 2020
	<b>Delivered on:</b> 21 AUGUST 2020
<b>Neutral citation:</b> <i>Ismail v Arar</i> (HC-MD-CIV-ACT-CON-2017/01623) [2020] NAHCMD 369 (21 August 2020)	
<b>The order:</b>  <i>In absentia</i> of the parties and/or their legal practitioners and having read other documents filed of record:  <b>IT IS ORDERED THAT:</b>  <ol style="list-style-type: none"><li>1. The immovable property Erf No. 250, Rocky Crest (Extension No. 3), situate in the municipality of Windhoek, Registration Division “K”, Khomas Region, measuring 360 (three six zero) square meters, held by Deed of Transfer No. T 5407/15, is hereby declared executable.</li><li>2. The respondents to pay the costs of suit.</li><li>3. The matter is removed from the roll and is considered as finalised.</li></ol>	
<b>Following below are the reasons for the above order:</b>	
<p>[1] The respondents bear the onus to satisfy the court that there are less drastic measures which the applicant could employ to satisfy the judgment other than to have the immovable property, which is their primary home, declared executable.</p> <p>[2] The respondents devoted a great deal of their answering affidavit to explain the origin of the</p>	

claim and efforts they made to settle the debt before and after judgment was granted. But that is not the issue for consideration before court. The respondents were required to put facts before court to show that there are less drastic measures that can be employed other than to sell their primary home.

[3] The respondents claim that the applicant or the deputy-sheriff failed to execute upon movables, however the respondent failed to identify such movables or directing the deputy-sheriff thereto. Neither did the respondent state the where about of such movables nor provide the description of such movables or its estimated value. For instance the respondents failed to state whether the movables concerned are equipment or household furniture and appliances.

[4] It is not the respondents' case that the applicant is acting in bad faith or is abusing the court process.

[5] The respondent failed to suggest to the court what less drastic measures could be taken by the applicant to satisfy the judgment in its favour. For instance, the respondents failed to state whether they are or either of them is earning an income and if so what portion of such income could be devoted to the payment of the judgment? There is absolute no evidence before court of less drastic measures that can be resorted to in order to save the primary home from being declared executable.

[6] The court is satisfied that the applicant had made any and all efforts to execute upon the respondents' movables. This includes directing the deputy-sheriff to attach the positive balance in the respondents' bank account. Only one bank account was found with a positive balance of about N\$14 000 which was attached. The applicant further directed the deputy-sheriff to attach stock-in-trade in a shop at Omaruru which the applicant understood belonged to the respondents. A *nulla bona* return was rendered. The applicant also conducted a search a Natis to establish whether any motor vehicle is registered in the respondents' name. The search appeared to have produced negative results.

[7] In the circumstances, I have found that the respondents failed to discharge the onus which rest on them. It is therefore unavoidable that the immovable property stands to be declared especially executable.

<b>Judge's signature:</b>	<b>Note to the parties:</b>
	Not applicable.
<b>Counsel:</b>	

<b>Applicant</b>	<b>Respondent</b>
F G Erasmus of Francois Erasmus & Partners, Windhoek	M N Mwandingi of Mwandingi Attorneys, Windhoek