REPUBLIC OF NAMIBIA

IN THE HIGH COURT OF NAMIBIA, MAIN DIVISION, WINDHOEK

JUDGMENT

Case Title:	Case No:
Urban Farming CC and Others and Kaunapaua Ndilula NO and Others	HC-MD-CIV-MOT-GEN-2020/00375
	Division of Court: HIGH COURT (MAIN DIVISION)
Heard before: Parker AJ	**Date of hearing:** 16 October 2020
	Date of order: **19 October 2020**
Neutral citation: *Urban Farming CC v Ndilula* (HC-MD-CIV-MOT-GEN-2020-00375) [2020] NAHCMD 474 (19 October 2020)	
Having heard Mr T Andima, counsel for applicants, and Mr A van Vuuren, counsel for respondents; and having read the papers filed of record for Case No. HC-MD-CIV-MOT-GEN-2020/00375:	

IT IS HEREBY ORDERED THAT:

1. The application is refused with costs for lack of urgency; and is struck from the roll.
2. Applicants are ordered to pay respondents their costs for opposing the application, and the costs shall include costs of one instructing counsel and one instructed counsel.
3. The matter is finalised and is removed from the roll.

Reasons for the order:

Parker AJ

[1]   I find that a judgment by default was granted by the court on 22 November 2019 and an order refusing an application to rescind the judgment was granted on 15 July 2020. That order has not set aside by a competent court; and so the judgment by Prinsloo J stood to be executed.   Applicants did nothing to upset that judgment after 15 July 2020. On 25 November 2019 a writ of execution was obtained was obtained against the moveable assets in applicants, possession. The writ was generated by the e-justice system the same day and it has existed there since then; and what is more, applicants' legal practitioners have had access to it since that date. Applicants did nothing to upset the judgment since 15 July 2020 and they have done nothing to upset the writ of execution since 25 November 2019 until they received knowledge of the Notice of Sale in Execution on 28 September 2020, that is, a period of some 11 months. And applicants have vouchsafed no explanation for their inaction; only to wake up suddenly and approach the court at a breakneck speed, praying the court for a final interdict to restrain the execution of the judgment on the basis of urgency.

[2]   I, therefore, find, on the papers, that applicants have not set out explicitly the circumstances which applicants aver render the matter urgent; and they have not set out explicitly the reasons why applicants claim they could not be afforded substantial redress at a hearing in due course as required by the peremptory requirements prescribed by r 73 (4) of the rules of court (see *Nghiimbwasha and Another v Minister of Justice and Others*) [2015] NAHCMD 67 (A38/2015) (20 March 2020), considering that on their own account, the

applicants are not the owners of the goods attached to be sold at a public auction. Additionally, on the papers, I find that, the urgency is self-created; and so, on the authority of *Bergmann v Commercial Bank of Namibia Ltd and Another* 2001 NR 48, the court should decline to condone the applicants' non-compliance with the rules of court or hear the matter on the basis of urgency.

[3]   In the result, I conclude that applicants have failed to satisfy the peremptory requirements of r 73 (4) of the rules of court. Consequently, on the authority of *Salt and Another v Smith* 1990 NR 87 and *Bergmann v Commercial Bank of Namibia Ltd and Another*, the application is refused with costs for lack of urgency; whereupon, I make the following order:

1. The application is refused with costs for lack of urgency; and is struck from the roll.
2. Applicants are ordered to pay respondents their costs for opposing the application, and the costs shall include costs of one instructing counsel and one instructed counsel.
3. The matter is finalised and removed from the roll.

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C Parker

Acting Judge

Judge's signature	Note to the parties:
	Not applicable
Counsel:	
Applicants	**Respondents**
Mr T Andima	Mr A Van Vuuren Instructed by J Gaya
Of Van der Merwe-Greeff Andima Inc.	Of Fisher, Quarmby & Pfeifer
Windhoek	Windhoek

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