

**REPUBLIC OF NAMIBIA**



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

**JUDGMENT**

Case No: HC-MD-CIV-MOT-GEN-2021/00387

In the matter between:

**UDO KURT WEIMANN**

**APPLICANT**

and

**NATALIE WEIMANN (BORN DAVIS)  
THE DEPUTY SHERIFF FOR THE  
DISTRICT OF WINDHOEK**

**1<sup>st</sup> RESPONDENT**

**2<sup>nd</sup> RESPONDENT**

**Neutral citation:** *Weimann v Weimann* (HC-MD-CIV-MOT-GEN-2021/00387)  
[2021] NAHCMD 477 (14 October 2021)

**Coram:** MILLER, AJ

**Heard:** 06 October 2021

**Delivered:** 14 October 2021

**Flynote:** Urgent application – Sale in Execution – Should the court refuse to grant applicant the relief he seeks, a sale in execution is bound to follow – That will render any judgment in the pending litigation an academic exercise

**Summary:** The applicant and the first respondent became divorced in 2020. They concluded an agreement of settlement which was subsequently made an order of

this court. The first respondent claims that the applicant failed to honour the part of the agreement and subsequent order, insofar as it relates to certain payments the applicant undertook to pay to the first respondent. The first respondent deposed to an affidavit to that effect, and in consequence thereof, the Registrar of this court issued a writ of execution on 10 May 2021. In due course the second respondent attached some movables of the applicant. A sale in execution was arranged for 1 October 2021 and 2 October 2021, which brought about this urgent application.

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## ORDER

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1. Prayer 1 and 2 as per the Notice of Motion, is granted.
  2. The first respondent is ordered to pay the applicant's costs, save for those mentioned in prayer 3 below.
  3. The applicant is ordered to pay the costs consequent upon the cancellation of the sales in execution scheduled for 1 and 2 October 2021.
  4. The matter is removed from the roll and regarded finalized.
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## JUDGMENT

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**MILLER, AJ**

**A     Introduction**

[1]     In this matter the applicant seeks the following relief:

‘1.     That the Applicant’s non-compliance with the forms and service as provided for in the Rules of this Honourable (*sic*) Court be condoned and that the matter be heard on an urgent basis as contemplated in Rule 73 (3).

2.     That the sale in execution in respect of the movable property of the applicant listed as

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2.1    1 x Renault Duster 2015 Re No: N204-028W

2.2    1 x Couch

2.3    1 x Chairs

2.4    Big Patio Table

2.5    Be stayed pending:

2.5.1 the proper and correct issuance of a Writ of Execution by the Registrar of this Honourable Court.

2.5.2 The finalization of the proceedings under case number HC-MD-CIV-MOT-GEN-2021/00333.

3. Ordering the First respondent or any party opposing this application to pay the Applicant's costs.
4. Further and/or alternative relief.'

[2] The application was launched on 30 September 2021.

[3] The matter is opposed by the First Respondent.

[4] When the case was called, counsel for the First Respondent informed court that the applicant only received notice of the application on the morning of the hearing. Given these circumstances I issued the following order on 1 October 2021:

- '1. The case is postponed to 6 October 2021 at 09:00 for an Urgent Application Hearing (Reason: Hearing).
2. By agreement between the parties, the sale of execution scheduled to take place on 1 October 2021 and 2 October 2021, will not proceed and is stayed pending the finalization of this matter.
3. The parties are directed to exchange and file the necessary affidavits and be ready to proceed with the application on the set down date.'

[5] When the case was called on 6 October 2021 answering and replying affidavits had been filed, whereupon I proceeded to hear argument.

#### B The factual matrix

[6] During the course of the hearing, by and large the facts which I consider relevant for the purpose of this application, became common cause.

[7] They are the following:

- (a) The applicant and the first respondent became divorced in 2020.
- (b) They concluded an agreement of settlement which was subsequently made an order of this court.

- (c) The first respondent claims that the applicant failed to honour the part of the agreement and subsequent order, insofar as it relates to certain payments the applicant undertook to pay to the first respondent.
- (d) The first respondent deposed to an affidavit to that effect, and in consequence thereof, the Registrar of this court issued a writ of execution on 10 May 2021.
- (e) In due course the second respondent attached some movables of the applicant.
- (f) A sale in execution was arranged for 1 October 2021 and 2 October 2021.
- (g) The Notice of the intended sales was duly advertised as required.
- (h) In the interim, on 24 August 2021 the applicant approached this court seeking, *inter alia*, that the mentioned Writ of execution order and all proceedings flowing from it, be stayed (Case No. HC-MD-CIV-MOT-GEN-2021/00333).
- (i) These proceedings become opposed and is due to return to court on 28 October 2021.
- (j) In an effort to starve off the impending sale in execution the legal practitioner of the applicant offered to put up security in the amount of N\$50 000.

#### C Submissions by first respondent

[8] Counsel for first respondent raised the issue in *limine* that the applicant's paper did not satisfy the requirements of Rule 73(37) and Rule 73 (4). In support of her submissions I was referred to a number of decisions by this court. A common thread in all those judgment is that an applicant must set out explicitly why the matter is urgent and secondly why he/she will not be offered substantial redress in due course.

[9] Speaking for myself, I agree with the ratio of those decisions. It must be borne in mind however that in exercising the discretion which I have, I will have regard to all the facts, particularly those which are not in dispute.

[10] It is evident from the facts I mentioned that the first respondent was intent on proceeding with the sale in execution with full knowledge of the fact that there is a pending litigation before the court, in which it is sought that the writ of execution was not validly issued. It is apparent from the perusal of the answering affidavit that the first respondent believes that litigation lacks merit, has no substance, and is a

delaying tactic. The short answer to that is that the merits or otherwise of the pending litigation does not depend upon the beliefs of the first respondent but rather the judgment of the court who is destined to hear the matter. Should I refuse to grant applicant the relief he seeks, a sale in execution is bound to follow. That, as counsel for the first respondent conceded, will render any judgment in the pending litigation an academic exercise.

[11] These facts and circumstances are sufficient in my view to grant the application.

D Costs

[12] I note the fact that firstly, the application was brought at the proverbial last moment. I also take into account that the legal representative of the first respondent advised the applicant's legal representative on 30 September 2021 that the sale will not proceed should certain sums be deposited to their trust account, which did not occur. Lastly given the relative uncomplicated nature of the application, I will exclude the cost of instructed counsel.

[13] In the result, I make the following orders:

5. Prayer 1 and 2 as per the Notice of Motion, is granted.
6. The first respondent is ordered to pay the applicant's costs, save for those mentioned in prayer 3 below.
7. The applicant is ordered to pay the costs consequent upon the cancellation of the sales in execution scheduled for 1 and 2 October 2021.
8. The matter is removed from the roll and regarded finalized.

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K MILLER  
Acting Judge

**APPEARANCES:****APPLICANT:**

Mr Boesak

Instructed by Delport Legal Practitioners

Windhoek

**RESPONDENT:**

Ms Garbers-Kirsten, assisted by Mr Harmse

Instructed by Fisher, Quarmby & Pfeifer

Windhoek