

REPUBLIC OF NAMIBIA



IN THE HIGH COURT OF NAMIBIA, MAIN DIVISION, WINDHOEK

RULING

Case Title: Helvi Ndilimeke Uushona and Fransina Jona Bertha Ndeshipewa Uushona Edwina Thomas Isabel Wotete Hasheela Albertus Bebe !Huseb	Applicant 1 st Respondent 2 nd Respondent 3 rd Respondent 4 th Respondent 5 th Respondent	Case No: HC-MD-CIV-MOT-GEN-2022/00348 Division of Court: High Court (Main Division) Date of hearing: 09 August 2022
Heard before: Honourable Lady Justice Rakow	Delivery Date: 30 August 2022	
Neutral citation: <i>Uushona v Jona</i> (HC-MD-CIV-MOT-GEN-2022/00348) [2022] NAHCMD 441 (30 August 2022)		
Order: 1. The application is struck from the roll and is regarded as finalized. 2. No order as to costs.		
Reasons for orders: RAKOW J <u>Introduction</u> [1] The application before this court was initially set down for hearing at 9h00 on 2 August		

2022 but at the time that the matter was called the returns of service for the respondents were not filed. The applicant explained that she experienced some challenges in obtaining these returns timeously from the deputy sheriff. The matter was then postponed to 10 August 2022 to ensure that the returns of service are uploaded. The matter then proceeded.

[2] The applicant initially sought the following relief:

1. That the respondents that are herein referred to as the "Occupants", are interdicted and restrained, either personally, through the Namibian Police force, through their agents or through any other party, specified or unspecified, from evicting me from the house that is situated at Erf 7267, Hans Dietrich Genscher Street, Shandumbala, Katutura, Windhoek, Namibia; in line with the Writ of Ejectment that was issued on Friday, 6 May 2022 in favor of the Plaintiff in the matter HC-MD-CIV-ACT-OTH-2021/01499;

2. That the telephonic (verbal) agreement that was entered into at or about 18:54 on Sunday, 26 June 2022 by the respondents in this matter (the Occupants), with the plaintiff in High Court case HC-MD-CIV-ACT-OTH-2021/01499, with respect to vacating the house that is situated at Erf 7267, Hans Dietrich Genscher Street, Shandumbala, Katutura, Windhoek, Namibia be declared null and void and therefore; invalid, and of no legal force and effect in the face of the pending Notice of Appeal to the Supreme Court of Friday, 15 July 2022, against the whole of the Judgment of Thursday, 21 April 2022 (as per Rakow EJ) in favor of the plaintiff in High Court case HC-MD-CIV-ACT-OTH-2021/01499;

3. That the verbal agreement that was entered into on or about 24 November 2020, by the respondents in this matter (the Occupants) with the Plaintiff in High Court case HC-MD-CIV-ACT-OTH-2021/01499, for the purpose of committing all the occupants of Erf 7267, Hans Dietrich Genscher Street, Shandumbala, Katutura, Windhoek (including myself) into vacating the property on or before 31 December 2020 be declared null and void and therefore; invalid, and of no legal force and effect;

4. That the respondents that are herein referred to as the "Occupants", are temporarily, forcefully ejected within 48 hours, following the filing this application, from the house that is situated at Erf 7267, Hans Dietrich Genscher Street, Shandumbala, Katutura, Windhoek, Namibia; pending the outcome of my sought appeal to the Supreme Court, in the interest of my safety as well as for the sake of preventing additional vandalism to the property by the

respondents in this matter;

5. That the second respondent is temporarily restrained within a period of 48 hours following the filing this application, from entering into a distance of within 10 meters from the property at Erf 7267, Hans Dietrich Genscher Street, Shandumbala, Katutura, Windhoek, Namibia; pending the outcome of my sought appeal to the Supreme Court, in the interest of my safety as well as for the sake of preventing additional vandalism to the property by the second respondent in this matter;

6. That the respondents be ordered to pay the costs of this application at the rate of attorney client;

7. Further and/or alternative relief.

Initial observations by the court

[3] Rule 73(3) of the High Court Rules provides that the court may dispense with the forms and service provided in these rules. This rule gives the court a discretion to dispense with the forms and specifically with the service provided for in the court rules. It is however not an automatic consideration and should be asked for. The notice of motion should specifically request the presiding judge to dispense with the forms and service as provided for by the rules and the court cannot *mero moto* grant such an order.

[4] As this prayer does not form part specifically of the relief requested in the notice of motion, I find that the notice of motion lack certain prayers that will enable proper relief being granted and as such, the application must be struck from the roll and regarded as finalized. No order as to costs.

[5] In the result, I make the following order:

1. The application is struck from the roll and is regarded as finalized.
2. No order as to costs.

Judge's signature	Note to the parties:
<p style="text-align: center;">RAKOW Judge</p>	<p style="text-align: center;">Not applicable.</p>
<p>Counsel:</p>	

Applicant	Respondents
Helvi Ndilimeke Uushona (In person) Windhoek	No appearance