

REPUBLIC OF NAMIBIA

HIGH COURT OF NAMIBIA



MAIN DIVISION, WINDHOEK

RULING

PRACTICE DIRECTIVE 61

Case Title: Standard Bank Namibia Ltd v Embassy of the Republic of Angola: Windhoek-Namibia & Rodriques Manuel Alexandre	Case No: HC-MD-CIV-ACT-CON-2021/02570
	Division of Court: HIGH COURT(MAIN DIVISION)
Heard before: TOMMASI, J	Date of hearing: 21 APRIL 2023
	Date of order: 14 JUNE 2023 Reasons delivered on: 14 JUNE 2023
Neutral citation: <i>Standard Bank Namibia Ltd v Embassy of the Republic of Angola & Another</i> (HC-MD-CIV- ACT-CON2021/02570) [2023] NAHCMD 326 (14 June 2023)	
Results on merits: No decision on the merits	
<p>The following order is made:</p> <ol style="list-style-type: none">1. The applicant is granted leave to intervene in the rule 108 application brought under Case No. HC-MD-CIV-ACT-CON-2021/02570.2. The cost is to stand over until the end of the Rule 108 proceedings; <p>Further conduct of the matter: The matter is postponed to 28 June 2023 at 08:30 for submissions in respect of the application in terms of rule 108.</p>	
Reasons for orders:	

[1] The applicant herein applied for leave to intervene in the plaintiff's application to have the property declared executable in terms of Rule 108 of the High Court. The defendant herein did not oppose the application in terms of Rule 108.

[2] The plaintiff and defendant (the Embassy of the Republic of Angola), herein entered into an agreement of waiver of diplomatic immunity and the defendant consented to the jurisdiction of this court. On 20 November 2002, the plaintiff granted a home loan to the defendant in the sum of N\$3,800,000 and for an additional sum of N\$950 000. The loan is secured by the passing and registration of a first continuing covering mortgage bond.

[3] The defendant fell in arrears with the monthly instalments of N\$50 730. The total outstanding balance as per the particulars of claim is N\$1 235 486.34. The defendant did not oppose the action and default judgment was granted against the defendant for the amount claimed as well as interest thereon at the rate of 16.75% per annum as from 1 October 2020 until date of final judgment.

[4] The plaintiff applied for the property, certain: remaining extent of portion of Erf 22 Klein Windhoek (the property) to be declared executable. The applicant filed this application on 28 November 2022 for leave to intervene.

[5] It is common cause between the parties that the applicant resides in the property. It is also common cause that the defendant is a former ambassador for the defendant herein who subsequently retired. He holds a letter from the defendant acknowledging that the property now belongs to the applicant and that he may take transfer of the property.

[6] He submitted in his affidavit that he is prepared to pay the outstanding bond and has made settlement offers to the plaintiff. He also submits that the *nulla bona* return is not a true reflection of the position. He maintains that the defendant has property which may be sold in execution.

[7] The plaintiff's stance is that the applicant is not part of the agreement between the plaintiff and defendant, that the plaintiff obtained a judgment in its favour and is entitled to

have the property declared executable.

[8] Rule 41(2)(c) of High Court Rules provides as follow:

'A person entitled to join as a plaintiff or liable to be joined as a defendant in any action may, on notice to all parties, at any stage of the proceedings apply to the managing judge for leave to intervene as a plaintiff or defendant.'

[9] In *Ohorongo Cement (Pty) Ltd v Jack's Trading CC and Others and a Similar Matter* 2020 (2) NR 571 (SC) in paragraph 15, at page the court states the following:

' In deciding the issue whether or not Ohorongo's intervention application should have been decided before the settlement agreement was made an order of court, this court is guided by its earlier decision in *Trustco Ltd t/a Legal Shield Namibia and Another v Deeds Registries Regulation Board and Others* 2011 (2) NR 726 (SC) where it was held that:

'In a constitutional State, citizens are entitled to exercise their rights and they are entitled to approach courts, where there is uncertainty as to the law, to determine their rights.'

[10] The court is guided by the above authority and the fact that Rule 108 intrinsically calls upon the court to exercise judicial oversight. For these reasons the court herein grants the applicant leave to intervene in the application brought by the plaintiff in terms of Rule 108.

[11] The following order is made:

1. The applicant is granted leave to intervene in the rule 108 application brought under Case No. HC-MD-CIV-ACT-CON-2021/02570.
2. The cost is to stand over until the end of the Rule 108 proceedings;

Further conduct of the matter:

The matter is postponed to 28 June 2023 at 08:30 for submissions in respect of the application in terms of rule 108.

Judge's signature

Note to the parties:

	Not applicable
Counsel:	
Applicant	Respondent
Mr. Arnols Namandje & Co Inc	