

REPUBLIC OF NAMIBIA

HIGH COURT OF NAMIBIA



MAIN DIVISION, WINDHOEK

RULING

PRACTICE DIRECTION 61

<b>Case Title:</b> THE ACTING DEPUTY SHERIFF OF WINDHOEK MANFRED JUAN HENNES // WINDHOEK LIVESTOCK AUCTIONEERS CC & ANOTHER	<b>Case No:</b> INT-HC-INTERP-2023/00124; Main Case Number : HC-MD-CIV-ACT-CON-2018/02316
	<b>Division of Court:</b> HIGH COURT (MAIN DIVISION)
<b>Heard before:</b> HONOURABLE MR JUSTICE PARKER, ACTING	<b>Date of hearing:</b> 4 July 2023
	<b>Delivered on:</b> 19 July 2023
<b>Neutral citation:</b> <i>The Acting Deputy Sheriff of Windhoek Manfred Juan Hennes v Windhoek Livestock Auctioneers CC</i> (INT-HC-INTERP-2023/00124; Main Case Number: HC-MD-CIV-ACT-CON-2018/02316) [2023] NAHCMD 410 (19 July 2023)	
<b>Order:</b>  1. The second claimant and any person claiming under and through the second claimant are barred as against the applicant and the first claimant from making claim on the attached property.  2. The second claimant must pay the costs of:  (a) the first claimant; and (b) the applicant.  3. The matter is finalised and removed from the roll	

**Reasons for the above order:**

PARKER AJ:

[1] The applicant (the deputy sheriff (acting) for the district of Windhoek) has attached the movable property (the goods) listed in the Notice of Attachment in Execution that is filed of record in favour of the execution creditor, ie the first claimant, represented by Ms Lewies. The second claimant, in person, has claimed the movable property as his own.

[2] The issue for determination in these interpleader proceedings is whether the second claimant has proved his ownership of the said movable property. The applicable principles on interpleader proceedings are well settled. Relying on *Deputy Sheriff of Tsumeb v Koch and Another*,<sup>1</sup> Schimming-Chase AJ summarized the applicable guidelines as follows:

‘11.1 Firstly, a claimant should set out the particulars concerning her/his claim in a written document by providing the material facts which form the basis of her/his claim. This document may in some respects be similar to a particulars of claim (need not be set out with the precision required of pleadings) attached to a combined summons, but it is not to be confused with the particulars required for interpleader proceedings, which has its own set of requirements.

11.2 It is assumed that where one litigating party, in execution of a judgment in her/his favour, has goods attached which are with the other party, and a third party claims those goods as her/his property, that third party is burdened with the onus (throughout) to prove her/his claim to the goods. This is firstly because the third party is the claimant and secondly, because of the presumption (of ownership) which flows from possession.

11.3 If the bare allegation of ownership contained in the particulars of claim is not supported by facts, the factual basis may be provided during the hearing of evidence as is envisaged in Rule 113(10)(a).’

[3] The attached property is with the execution debtor and the second claimant claims the property as his own. The second claimant is burdened with the onus to prove his claim of the property. This is because of the presumption of ownership which flows from possession. The question that arises for determination is whether the second claimant has placed before the court sufficient and satisfactory proof of his claim to the attached property.<sup>2</sup>

<sup>1</sup> *Deputy Sheriff of Tsumeb v Koch and Another* 2011 (1) NR 202 (HC).

<sup>2</sup> See *The Acting Deputy Sheriff of Windhoek v Hasse and Another* [2021] NAHCMD 269 (1 June 2021) para 5.

[4] On the papers and submission by the second claimant, I find that the second claimant has failed to place before the court sufficient and satisfactory evidence tending to establish his ownership of the property. Accordingly, I accept the submission by Ms Lewies on the point. The papers filed of record in an attempt to discharge the onus cast on the second claimant to succeed are incapable of establishing sufficient and satisfactory proof of second claimant's claim to the property.

[5] One more thing. During the hearing of the instant application, the court warned the second claimant to desist from doing anything that would lead to the dissipation, disappearance or destruction of the attached property.

[6] Based on these reasons, I hold that the second claimant's claim fails, whereupon I order as follows:

1. The second claimant and any person claiming under and through second claimant are barred as against the applicant and first claimant from making claim on the attached property.
2. The second claimant must pay the costs of:
  - (c) the first claimant; and
  - (d) the applicant.
3. The matter is finalised and removed from the roll.

<b>Judge's signature:</b>	<b>Note to the parties:</b>
	Not applicable.
<b>Counsel:</b>	
<b>First Claimant</b>	<b>Second Claimant</b>
R Lewies Instructed by Cronjé Inc., Windhoek	EC Rittmann In Person

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