

REPUBLIC OF NAMIBIA

HIGH COURT OF NAMIBIA
RULING ON AN
TO APPEAL
TO THE SUPREME COURT



MAIN DIVISION, WINDHOEK
APPLICATION FOR LEAVE

(PRACTICE DIRECTION 61)

Case Title: KATRINA MANDLA SHIMBULU // STANDARD BANK OF NAMIBIA LIMITED & 5 OTHERS	Case No: I 633/2016
	Division of Court: HIGH COURT (MAIN DIVISION)
Heard before: HONOURABLE MR JUSTICE ANGULA, DEPUTY JUDGE-PRESIDENT	Date of hearing: 25 JULY 2023
	Delivered on: 1 AUGUST 2023
Neutral citation: <i>Shimbulu v Standard Bank Namibia Limited</i> (I 633/2016) [2023] NAHCMD 460 (1 August 2023)	
The order: Having heard Ms Shimbulu , the applicant in person and having read the documents filed of record: IT IS ORDERED THAT: <ol style="list-style-type: none">1. The application for condonation is struck from the roll.2. The application for leave to appeal is struck from the roll.3. The matter is removed from the roll and is finalised.	
Following below are the reasons for the above order:	

Introduction

[1] I have before me an application for leave to appeal to the Supreme Court against the judgment I delivered and orders I made on 6 June 2023 which *inter alia* cancelled the sale in execution in terms of rule 110(10) of Farm Janine No. 365 situated in Kunene Region which took place on 19 June 2019 and further ordered the purchaser (applicant in the present matter) to vacate the farm within 30 days from the date of the orders. The orders were made due to the fact that the applicant had failed to comply with the conditions of sale particularly failure to pay the purchase price within the time period stipulated in the conditions of sale. It is against that judgment and orders that the applicant seeks an order for leave to appeal to the Supreme Court.

[2] The applicant is acting in person. I should mention that the applicant's locus standi is precarious in that it has been held that until an immovable property that has been sold in execution has been transfer into the name of the purchaser, the purchaser has no enforceable right vis-à-vis such immovable property. The purchaser might have some contractual right towards the deputy-sheriff.¹ It is common cause that the farm has not been transferred to the applicant. I deem it unnecessary to deal with the issue in view of order I propose to make at the end of this ruling.

[3] It appears from the return of service that the application was served by the Deputy Sheriff on Standard Bank, the execution creditor and delivered (not served) at the offices of Dr Weder, Kauta & Hoveka Inc., the legal practitioner for Standard Bank.

[4] The application is not opposed.

Application for condonation

[5] The applicant also filed an application for condonation for the late filing of her application for leave to appeal. In terms of rule 115(2), an application for leave to appeal must be made within 15 days after the order appealed against was made. As mentioned earlier, the judgment and orders for which leave to appeal is sought, were made on 6 June 2023. The application for leave to appeal was filed with the registrar's office on 5 July 2023, thus long after the period of 15 days has passed by hence the need for the condonation

¹ *Katjiuanjo v Willemse* (I 3464/2011) [2012] NAHCMD 5 (26 September 2012).

application.

[6] It appears from the papers filed of record that after the applicant was served with the warrant of eviction she launched an urgent application whereby she sought an order inter alia declaring my judgment and orders 'unlawful' and that that judgment and the orders be 'rescinded' and/or 'set aside'. The application served before Prinsloo J who dismissed it for 'lack of jurisdiction'.

[7] In the view, I take with regard to whether or not it is necessary for the applicant to apply for leave to appeal, the application for condonation is unnecessary. The reason for my view will become apparent later in the ruling.

Brief background

[8] The applicant states that during her application before Prinsloo J she was 'informed that we should have applied to the Supreme Court instead, for (*sic*) the High Court cannot rescind or review its own Order.' It is not apparent why the applicant did not follow the court's directive and instead decided to bring the present application. In this connection, the applicant does not state in her papers in terms of what legal provisions of rules of this court why requires leave from this court to appeal to the Supreme Court. During the oral hearing, I posed the same question to her but she could not come up with an answer.

Instances where leave to appeal are required

[9] Section 18 of the High Court Act, No. 16 of 1990 (the 'Act'), stipulates in which instances applications for leave to appeal are required. The relevant sections for the purpose of this matter are subsection 1, 2 and 3 which read as follows:

18. (1) An appeal from a judgment or order of the High Court in any civil proceedings or against any judgment or order of the High Court given on appeal shall, except in so far as this section otherwise provides, be heard by the Supreme Court.

(2) An appeal from any judgment or order of the High Court in civil proceedings shall lie-

(a) in the case of that court sitting as a court of first instance, whether the full

court or otherwise, to the Supreme Court, as of right, and no leave to appeal shall be required;

(b) in the case of that court sitting as a court of appeal, whether the full court or otherwise, to the Supreme Court if leave to appeal is granted by the court which has given the judgment or has made the order or, in the event of such leave being refused, leave to appeal is granted by the Supreme Court.

(3) No judgment or order where the judgment or order sought to be appealed from is an interlocutory order or an order as to costs only left by law to the discretion of the court shall be subject to appeal save with the leave of the court which has given the judgment or has made the order, or in the event of such leave to appeal being refused, leave to appeal being granted by the Supreme Court.

(Underlining supplied for emphasis)

[10] It is clear from s 18 of the Act that leave to appeal is only required from the court of first instance in three instances: first, where the court from whose judgment or order sought to be appealed, sat as a court of appeal; second, where the judgment and/or order sought to be appealed is an interlocutory judgement or order; and thirdly if leave is refused by the court of first instance such leave must be sought and obtained from the Supreme Court by way of a petition to the Chief Justice.

[11] In the present matter the judgment and orders sought to be appealed from were neither made by the court sitting as a court of appeal nor the judgment and orders are interlocutory. As a matter of fact, the court set as court of first instance. In addition the judgment and orders sought to be appealed from are final in nature in that the judgment and orders are final in that they are definitive of the rights of parties and have the effect of disposing the relief claimed in the main proceedings.² The sale agreement entered into between the applicant and the deputy-sheriff has been final and effectively cancelled and cannot be revived. Similarly, the eviction order is final and not of interlocutory nature.

[12] It follows therefore that an appeal against the judgment and the orders made by this court on 6 June 2023 to the Supreme Court is as of right in terms of s 18(2)(a) and no leave to appeal is required. That being the case and even more so there was no need to file an

² *Di Savino v Nedbank Namibia Limited* (82 of 2014) [2017] NASC 32 (7 August 2017).

application for condonation.	
Judge's signature:	Note to the parties:
	Not applicable.
Counsel:	
Applicant	First Respondent
K M SHIMBULU In person	M KUZEEKO <i>of</i> Dr Weder, Kauta & Hoveka Inc. <i>(Watching brief)</i>