

REPUBLIC OF NAMIBIA

HIGH COURT OF NAMIBIA



MAIN DIVISION, WINDHOEK

RULING

PRACTICE DIRECTION 61

Case Title: THE ACTING DEPUTY SHERIFF OF WINDHOEK MANFRED JUAN HENNES // DEVELOPMENT BANK OF NAMIBIA & ANOTHER	Case No: INT-HC-INTERP-2023/00122 HC-MD-CIV-ACT-CON-2019/00472
	Division of Court: HIGH COURT (MAIN DIVISION)
Heard before: HONOURABLE MR JUSTICE PARKER, ACTING	Date of hearing: 28 SEPTEMBER 2023
	Delivered on: 18 OCTOBER 2023
Neutral citation: <i>The Acting Deputy Sheriff of Windhoek Manfred Juan Hennes v Development Bank of Namibia</i> (HC-MD-CIV-ACT-CON-2019/00472) [2023] NAHCMD 664 (18 October 2023)	
Order:	
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, save – (a) Defy Chest Freezer, (b) Hisense Flat-Screen TV, and (c) Black Leather 2-Seater Benedict Couch.	
1. The second claimant must pay the costs of: (a) the first claimant; and (b) the applicant.	

2. The matter is finalised and removed from the roll.

Reasons:

PARKER AJ:

[1] The applicant (the deputy sheriff (acting) for the district of Windhoek) has attached the movable property (ie the goods) listed in the Interpleader Notice that is filed of record in favour of the execution creditor, ie the first claimant, represented by Mr Ulrich. The second claimant, in person in these proceedings, has claimed the movable property as his own. The first claimant has accepted that the second claimant owned the following items that are on the list: (a) Defy Chest Freezer, (b) Hisense Flat-Screen TV, and (c) Black Leather 2-Seater Benedict Couch.

[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*,¹ Schimming-Chase AJ summarised 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).’

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

[3] I find that the goods were attached at the *domicilium citandi et executandi* of 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.²

[4] The second respondent did not file any papers in an attempt to discharge the onus cast on the second claimant to succeed, and his oral submission does not fare any better. I find that the oral submission is incapable of establishing sufficient and satisfactory proof of second claimant's claim to the aforementioned property. Accordingly, I accept the submission by Mr Ulrich on the point.

[5] Based on these reasons, I hold that the second claimant's claim has failed, 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, save –
 - (a) Defy Chest Freezer,
 - (b) Hisense Flat-Screen TV, and
 - (c) Black Leather 2-Seater Benedict Couch.
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.

Judge's signature:	Note to the parties:
	Not applicable.

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

Counsel:	
First Claimant	Second Claimant
B Ulrich Of AngulaCo. Inc., Windhoek	G C Homba In Person