

REPUBLIC OF NAMIBIA



IN THE HIGH COURT OF NAMIBIA, MAIN DIVISION, WINDHOEK

RULING IN TERMS OF PRACTICE DIRECTION 61

Case Title: Alexius Tukoterera Tjihero and Agricultural Bank of Namibia Deputy Sheriff of the District of Gobabis	Case No: HC-MD-CIV-MOT-GEN-2023/00116 Division of Court: Main Division Heard on: 19 September 2024
Applicant	1st Respondent 2nd Respondent
Heard before: Honourable Lady Justice Rakow	Delivered on: 15 October 2024
Neutral citation: <i>Tjihero v Agricultural Bank of Namibia</i> (HC-MD-CIV-MOT-GEN-2023/00116) [2024] NAHCMD 601 (15 October 2024)	
Order:	
<ol style="list-style-type: none">1. The applicant's application is dismissed with costs.2. The matter is finalised and removed from the roll.	
Reasons for order:	
RAKOW J:	

Introduction

[1] The applicant is Mr Alexius Tukotorera Tjihero, an adult male person and a farmer residing at Portion 1 of the Farm Cala Noord, No. 577, Omaheke Region. The first respondent is Agricultural Bank of Namibia, established in terms of section 3 of the Agricultural Bank of Namibia Act 5 of 2003. The second respondent is the Deputy Sheriff of the District of Gobabis.

[2] On 15 March 2024, the applicant instituted an application seeking the following relief:

- '1 An order declaring that the respondent is not empowered by the Rules of this Court to obtain a declaration of applicant's primary home specially executable by means of summary judgment.
2. An order declaring that the respondent's legal practitioner is not empowered or authorised by any legislation or the common-law to have represented the respondent or to have appeared in Case Number HC-MD-CIV-ACT-CON2019/00172 and to have procured judgment dated 29 January 2020 on behalf of the respondent.
3. An order declaring that the second Respondent failed to comply with the provisions of section 17 (4) of the Agriculture (Commercial) Land Reform Act of 1995.
4. An order declaring that the judgment procured by the respondent on 29 January 2020 is a nullity. 5. An order declaring that the declaration of applicant's home executable is a deprivation of applicant's vested right of protection under Rule 108.
6. Declaring that the purported legal practitioner further exceeded and/ or abused authority to represent the respondent in case no. HC-MD-CIV-ACT-CON-2019/00172 without having been instructed or authorised in accordance with the law.
7. An order declaring all proceedings consequent to the order declaring applicant's primary home specially executable null and void.
8. An order directing that all steps and relief upon the summary judgment, including any sale in execution, be stayed until the outcome of this matter.
9. An order granting the Applicant further and/ or alternative relief as the court may deem fit to restore the status quo ante as before 29 January 2020.'

[3] The first respondent delivered its notice of intention to oppose the applicant's application on 22 March 2023. The applicant represents himself whilst the first respondent is represented by Ms Kamati.

Background

[4] This matter relates to a property described as Portion 1 of the Farm Cala Noord, No. 577, which was declared specially executable, through summary judgment granted on 29 January 2020. The applicant's case revolves around the validity of the summary judgment granted. The first respondent opposed the application on the basis that this court does not have the jurisdiction to entertain the applicants application.

Arguments on behalf of the applicant

[5] The applicant argues that the decision to institute legal proceedings under case number HC-MD-CIV-ACT-CON-2019/00172 should have been taken at a properly convened and constituted meeting of the board, by the members of the board, who should have passed a resolution authorizing such an action. The applicant further argues that in the absence of a properly convened and constituted meeting nor such resolution, the board has not taken the decision to institute legal proceedings under case number HC-MD-CIV-ACT-CON-2019/00172.

Arguments on behalf of the first respondent

[6] Counsel for the first respondent argues that on 29 January 2020, under case number HC-MD-CIV-ACT-CON-2019/00172, this court granted the first respondent summary judgment against the applicant. To date, the applicant has not rescinded or appealed against the aforesaid order to the Supreme Court. Counsel takes it further to state that this court does not have the jurisdiction or competence to grant declarations of invalidity in respect of its own judgments and orders. The declaratory relief sought by the applicant has the consequence of impermissibly impeaching an order of this court.

[7] Counsel for the first respondent argued that the summary judgment order was executed upon during March 2023 and the applicant's immovable property was (subject to the usual conditions in respect of agricultural land) sold on public auction. To date, there has been no challenge to the sale in execution. In the premises, there is no basis for this court to exercise its discretion in favour of any of the declaratory relief sought by the applicant.

Legal principles

[8] Section 16 of the said High Court Act 16 of 1990, provides the following:

‘The High Court shall have jurisdiction over all persons residing or being in and in relation to all causes arising and all offences triable within Namibia and all other matters of which it may according to law take cognisance, and shall, in addition to any powers of jurisdiction which may be vested in it by law, have power –

- a. to hear and determine appeals from all lower courts in Namibia;
- b. to review the proceedings of all such courts; . . .’

[9] This jurisdiction has been conferred by law, to the Supreme Court in s 16 of the Supreme Court Act 15 of 1990, which provides the following:

‘(1) In addition to any jurisdiction upon it by this Act, the Supreme Court shall, subject to the provisions of this section and section 20 have the jurisdiction to review the proceedings of the High Court or any lower court, or any administrative tribunal or authority established or instituted by or under any law.’

[10] It is very clear from the foregoing, namely the High Court Act and its rules, and the Supreme Court Act, that the High Court does not have any jurisdiction to review its own proceedings or decisions. This power resides, by law only in the Supreme Court. Section 16(c) of the High Court Act, which was repealed, did previously allow judges of this court to preside over appeals from a judgment of a single judge of this court. This is now distant memory.

[11] In *Beukes and another v The President of the Republic of Namibia and 11 Others*¹, the Supreme Court held that:

‘[71] The High Court does not have the authority to review or overturn its own decisions, nor does it have appellate jurisdiction over its own decisions. This means that one High Court judge cannot pass judgment on another High Court judge's decision, nor can the High Court reconsider its own decisions.

[72] The High Court is tasked with considering the issues between the parties ventilated during the action or motion proceedings and deciding them in a considered judgment. Subject to a few well-known exceptions to the rule, the court is *functus officio* once it has pronounced its order in the matter and

¹ *Beukes and Another v The President of the Republic of Namibia and 11 Others* (SA 41-2021) NASC [2024] (6 September 2024).

cannot correct, alter, or supplement it.’

[12] The Supreme Court in *Mukapuli v Swabou Investment (Pty) Ltd*,² held that –

‘[10] The high court has original jurisdiction and appellate jurisdiction in matters referred to in art 80(2). It is therefore clearly a “competent court” as contemplated in art 25 on those matters, but it has no appellate jurisdiction in regard to appeals from itself, that is to say a judge of the high court may not sit in judgment over a decision of another high court judge on essentially the same facts and issues between the same litigants. Nor can the high court review its own decision under those circumstances. The high court considered the issues between the parties ventilated at the trial and decided them in a considered judgment. Subject to a few well-known exceptions to the rule, the court is functus officio once it has pronounced its order in the matter and cannot correct, alter or supplement it.’ (Emphasis supplied).

[13] In *Schameera Seven (7) Reg: CC 2003/2211 and Others v Standard Bank of Namibia Limited and Others* (HC-MD-CIV-MOT-REV 355 of 2020) [2021] NAHCMD 449 (30 September 2021), the court held that:

‘[38] A party, like the applicants, who approach this court seeking that it reviews its own decisions in terms of rule 76, are clearly barking the wrong tree. This court may, in appropriate circumstances, rescind its decisions, under rule 16 and rule 103. This is a far cry from what the applicants seek, which is a review by this court, of a decision of a judge of co-ordinate jurisdiction. This is an exercise this court cannot embark upon, regardless of the nature and seriousness that may be pointed out by a litigant before it. Its hands are permanently tied and it may not move its hands of justice to come to the rescue of such a party.’

[14] In *Sylvie Mcteer Properties v Kuhn & Others*,³ the Supreme Court held as follows with respect to the doctrine of functus officio:

‘[33] It is in the public interest that litigation be brought to finality: litigants must be assured that once an order of court is made, it is final and they can arrange their affairs in accordance with that order. It is trite that where an order is final in nature, a subsequent court of equivalent jurisdiction cannot sit in review of those orders, unless new facts are presented or it is impugned in terms of rule 44(1)(a). Failing that, the High Court remains *functus officio* and may not set aside its own judgment or order. (*Mukapuli and Another v Swabou Investment (Pty) Ltd and Another* 2013 (1) NR 238 (SC) at 240I – 241C.) The reason is that once the court becomes *functus officio*, its jurisdiction in the matter is fully and finally exercised and its authority over the subject matter ceases.’ (Emphasis supplied).

² *Mukapuli and Another v Swabou Investment (Pty) Ltd and Another* 2013 (1) NR 238 (SC).

³ *Sylvie Mcteer Properties v Kuhn & Others* 2017 (4) NR 929 (SC) 938 C-D.

Conclusion

[15] The applicant, Mr Tjihero did not bring an application for a rescission or variation of the orders granted by Usiku J, whether in terms of rule 16 (which admittedly does not appear to apply), under rule 103 or indeed in terms of the common law. This court has fully and finally exercised its jurisdiction in this matter between the parties. It is therefore improper for this court to be required by the applicant to revisit its order. That is a matter that must be brought to the Supreme Court for an appropriate remedy if we are to remain true to the applicable jurisprudence currently in force as cited above.

[16] When one has regard to the relief sought by the applicant, it becomes clear that what the applicant seeks is not a rescission of the order or a variation thereof. They seek an order which effectively allows this court to impermissibly open a matter that is, for all intents and purposes closed. I am of the considered view that this court, as argued on the respondent's behalf, does not indeed, have jurisdiction to review its decisions. The application cannot, in the circumstances, be sustained.

[17] The ordinary rule applicable to costs is that costs follow the event. In this matter, the first respondent is successful. It is thus entitled to its costs. There is nothing submitted, or apparent from the papers, or the conduct of the matter, that would suggest, even remotely, that this is a proper case in which justice calls for any other order. The general rule will apply.

[18] For the foregoing reasons, the applicant's application cannot succeed as this court is not clothed with the necessary jurisdiction to entertain this matter, in the result, I make the following order:

1. The applicant's application is dismissed with costs.
2. The matter is finalised and removed from the roll.

	Note to the parties:
E RAKOW Judge	Not applicable

Counsel:	
Applicant:	1st Respondent:
AT Tjihero In person, Okahandja	N Kamati Of LorentzAngula Inc., Windhoek