

REPUBLIC OF NAMIBIA



HIGH COURT OF NAMIBIA MAIN DIVISION, WINDHOEK

JUDGMENT

Case No: HC-MD-CIV-MOT-GEN-2023/00489

In the matter between:

**CECILIA VASTI CHANTEL GAYA**

**APPLICANT**

and

**AGRICULTURAL BANK OF NAMIBIA**

**1<sup>st</sup> RESPONDANT**

**MANFRED J. HENNES DEPUTY SHERIFF OF HIGH COURT**

**2<sup>nd</sup> RESPONDANT**

**REGISTRAR OF DEEDS OFFICE**

**3<sup>rd</sup> RESPONDANT**

**MINISTER OF AGRICULTURE, WATER AND LAND REFORM**

**4<sup>th</sup> RESPONDANT**

**Neutral citation:** *Gaya v Agricultural Bank of Namibia* (HC-MD-CIV-MOT-GEN-2023/00489) [2024] NAHCMD 612 (18 October 2024)

**Coram:** USIKU J

**Heard:** 26 July 2024

**Delivered:** 18 October 2024

**Flynote:** Practice – Judgment and orders – Applicant seeking an order declaring a judgment of this court as ‘void *ab initio*’ – Applicant laying no valid factual basis for seeking such an order – Court holding that it is improper for a litigant to ask for such an order in the circumstances – Court further finding that applicant has set out to abuse the court’s process – Application dismissed with costs on the punitive scale.

**Summary:** The applicant, a lay litigant, has had two judgments given against her in favour of Agribank. One of judgments was in respect of a monetary claim which she owed to Agribank. The other judgment declared her immovable property specially executable. The applicant unsuccessfully applied for the rescission of the two judgments. She subsequently appealed, also without success, to the Supreme Court. Thereafter, she brought the present application seeking an order declaring the same two judgments as void *ab initio* on account that the legal practitioners who represented Agribank at the time when the judgments were obtained were not authorised by Agribank to obtain such judgments.

*Held* that, the applicant has not established a valid factual basis for its allegations that the legal practitioners were not authorised.

*Held* further that, it is improper in the circumstances, for a litigant to ask the court to declare its judgments void and such conduct amounts to an abuse of the court's process.

*Held* further that, the application is dismissed with costs on the scale of attorney and client.

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### ORDER

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1. The applicant's application is dismissed.
2. The applicant is ordered to pay the costs of the first respondent. Such costs are to be reckoned on attorney and client scale.
3. The matter is removed from the roll and is regarded finalised.

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## JUDGMENT

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USIKU J:

### Introduction

[1] This is an application in which the applicant seeks an order declaring certain processes and orders of this court as 'void *ab initio*'.

[2] The applicant seeks an order in the following terms:

1. Declaring the Combined Summons dated 7 August 2019 under case number HC-MD-CIV-ACT-CON-2019/03572 at the instance of first respondent *void ab initio*;
2. Declaring the default judgment procured in favour of first respondent under case number HC-MD-CIV-ACT-CON-2019/03572 *void ab initio*;
3. Declaring court order which declared the applicant's immovable properties specially executable under case number HC-MD-CIV-ACT-CON-2019/03572 *void ab initio*;
4. Declaring first respondent's application under case number HC-MD-CIV-MOT-GEN-2022/00196 on 5 April 2023 *void ab initio*;
5. Declaring the public auction held by second respondent on the strength of void judgments under case number HC-MD-CIV-ACT-CON-2019/03572 dated 25 September 2019 and 12 June 2020 respectively *void ab initio*;
6. Directing first respondent to pay costs of this application;
7. Further and/or alternative relief'.

### Background

[3] In 2014 and 2016, the first respondent ('Agribank') advanced loans in the sums of N\$238 000 and N\$7 256 500, respectively, to the applicant. The loans were secured by two mortgage bonds registered over certain Erf No Rehoboth A646 and certain Portion 5 (Omukaru) (A Portion of Portion 2 named Carolahof) of the Farm Nonikam No 253, situated in Khomas Region.

[4] The applicant breached the terms of the loan agreements in that she failed to make payments of the instalment amounts when they became due and payable as agreed.

[5] On 7 August 2019, Agribank instituted proceedings against the applicant in this court under case number HC-MD-CIV-ACT-CON-2019/03572.

[6] On 25 September 2019, Agribank obtained judgment against the applicant in the amounts of N\$359 950.72 and N\$9 345 455.42, together with interest and costs.

[7] On 12 June 2020, Agribank obtained judgment in its favour declaring the abovementioned immovable properties specially executable.

[8] On 7 April 2022, the farm was sold in execution.

[9] On 28 April 2022, the applicant applied to this court, under case number HC-MD-CIV-MOT-GEN-2019/00196, for rescission of the default judgments of 25 September 2019 and 12 June 2020.

[10] On 5 April 2023, this court dismissed the rescission application with costs.

[11] On 27 April 2023, the applicant filed a notice of appeal against the dismissal of the rescission application.

[12] The applicant failed to comply with certain rules of the Supreme Court and as a result, the applicant was deemed to have withdrawn her appeal. The Supreme Court delivered its judgement on 9 October 2023, and ruled that the appeal was deemed to have been withdrawn and observed that the High Court's judgment dismissing the applicant's rescission application was unassailable and that the application was correctly rejected.

[13] On 23 October 2023, the applicant brought the present application, seeking the relief as set out in para 2 hereof.

### Applicant's present application

[14] The substance of the application is that, the judgments of this court delivered on 25 September 2019, 12 June 2020 and 5 April 2023 are not valid on account that the legal practitioners who represented Agribank when such judgements were obtained, were not authorised by Agribank to obtain such judgments. The applicant further alleges that when the legal practitioners of Agribank instructed the deputy sheriff to hold the sale in execution, those legal practitioners were not authorised by Agribank to give such instruction.

[15] The applicant therefore asserts that the processes and judgments granted by this court in this matter are void.

### Agribank's opposition to the application

[16] In its opposing papers, Agribank submits that this court has no jurisdiction to grant the relief sought by the applicant.

[17] Agribank further contends that, in any event, the applicant has not made out a case for the relief it seeks.

### Analysis

[18] In her application, the applicant asks this court to declare certain of its judgments and processes as void. What is apparent from the application is that the applicant fails to make out an evidence-based case upon which her allegations of lack of authority on the part of Agribank's legal practitioners, are based. In other words, the applicant did not plead facts upon which her conclusions of lack of authority are based.

[19] It bears recalling that the applicant has already launched a rescission application against the impugned judgments. This rescission application was dismissed on 5 April 2023. Evidently, the applicant was dissatisfied with the dismissal

of the rescission and appealed to the Supreme Court. In effect, the Supreme Court confirmed the order dismissing the rescission application as having been correctly

made and observed that the applicant had no *bona fide* defence to Agribank's claim and that the rescission application was not *bona fide*.<sup>1</sup>

[20] In view of the findings expressed in the aforesaid Supreme Court judgment, I am of the view that the applicant was not entitled to litigate a second suit, in the same matter, arising from the same transaction, that could have been determined but was not raised in the first application.

[21] In any event, it is improper and an abuse of the process of this court for a litigant who had already brought a rescission application, which was dismissed, to bring a second suit asking the court to declare its own judgments void.

[22] In conclusion, the applicant's application has no merit and, in the present circumstances, amounts to an abuse of the court's process. The application, therefore, stands to be dismissed on the basis that the applicant is not entitled to the relief that she seeks.

[23] Insofar as the issue of costs is concerned, the general rule is that costs follow the result. I am of the view that the general rule must find application in the present case. Agribank asks for an adverse costs order against the applicant on the basis that the applicant has instituted the present proceedings without sufficient ground and solely for the purposes of abusing the court process and annoying it. I am in agreement that the applicant was not justified at all to bring the present proceedings, in light of the history of this case. In the circumstances, I am of the view that an adverse costs order is warranted in this case. I shall therefore grant such an order.

[24] In the result, I make the following order:

1. The applicant's application is dismissed.

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<sup>1</sup> *Agricultural Bank of Namibia v Gaya* case No SA/42/2023, delivered on 9 October 2023, para 13.

2. The applicant is ordered to pay the costs of the first respondent. Such costs are to be reckoned on attorney and client scale.
3. The matter is removed from the roll and is regarded finalised.

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B USIKU  
Judge

## APPEARANCES

Applicant: CVC Gaya (in person)  
Windhoek

1<sup>st</sup>

Respondent: CSS Brinkman  
Of LorentzAngula Inc.,  
Windhoek

3<sup>rd</sup> & 4<sup>th</sup>

Respondents: P Kamarenga (Holding a watching brief)  
Government - Office of the Government Attorney,  
Windhoek