

REPUBLIC OF NAMIBIA



HIGH COURT OF NAMIBIA MAIN DIVISION, WINDHOEK

JUDGMENT

Case No.: HC-MD-CIV-MOT-GEN-2023/00442

In the matter between:

JOHANNES CHRISTIAAN KOTZE

APPLICANT

and

CHRISTINA ELIZABETH GROENEWALD

RESPONDENT

Neutral citation: *Kotze v Groenewald* (HC-MD-CIV-MOT-GEN-2023/00442)
[2025] NAHCMD 40 (13 February 2025)

Coram: SIBEYA J

Heard: 18 June 2024

Delivery: 13 February 2025

Flynote: Law of property – Ownership – Eviction – *Rei vindicatio* – Registration of title over the property sufficient to prove ownership – Effect of the challenge to the *causa* that underlines the registration – The applicability of s 30 of the Administrates of Estates Act 66 of 1965 – The cancellation agreement of the sale in execution and its impact on the pending registration of the property – Intention of the owner to transfer property to another person – Application upheld.

Summary: This matter is about the validity of a sale in execution and registration of immovable property. The property in question is Farm Reyneveld No. 367, Registration Division "A", Kunene Region, measuring 3488.7118 hectares, held by Deed of Transfer 4327/2023 ('the property'). The Supreme Court on 4 October 2021, declared the property executable. A writ of execution was issued on 20 October 2021. On 20 June 2022, the property was sold in execution and purchased by the applicant for an amount of N\$4,5 million. On 7 August 2023, the property was registered in the name of the applicant. The applicant, therefor, sought the eviction of the respondent and all other persons occupying the property through the respondent. The respondent opposed the application.

Held: that where a claim for eviction is based on ownership, all that is required from the plaintiff is to prove ownership of the immovable property held by another person.

Held that: the respondent occupied the property despite the said property being sold to and registered in the name of the applicant.

Held further that: the ownership of the property passed upon judicial attachment as a consequence of the order of the Supreme Court declaring it executable.

Held: that the applicant proved ownership of the property and entitlement to evict the respondent from the property.

Applicant's claim upheld.

ORDER

1. The respondent and all persons claiming any right or interest to occupation of the premises situated at Farm Reyneveld No. 367, Registration Division "A", Kunene Region, measuring 3488.7118 hectares, held by Deed of Transfer 4327/2023 ("the property") must, within thirty (30) days after service of this order on the respondent, vacate the property.

2. The Deputy Sheriff is authorised and directed to evict the respondent and all persons holding occupation through the respondent from the property in the event that the respondent or any other do not vacate the property within thirty (30) days after service of this order on the respondent.

3. The respondent must pay the costs of the applicant.

4. The matter is regarded as finalised and removed from the roll.

JUDGMENT

SIBEYA J:

Introduction

[1] This matter revolves around the validity of a sale in execution of a farm and a consequent registration in the name of the purchaser.

[2] The applicant claims that he is the lawful owner of the farm, after purchasing it from auction and registering it in his name. The respondent occupies the farm, and the applicant seeks the eviction of the respondent and all persons claiming the right or interest to occupation of the farm through the respondent. The respondent opposes the application.

The parties and their representation

[3] The applicant is Mr Johannes Christiaan Kotze, an adult male person residing at Omatako Ranch in the district of Okahandja.

[4] The respondent is Ms Christina Elizabeth Groenewald, an adult female residing at Farm Reyneveld in the district of Outjo.

[5] Where it becomes necessary to refer to the applicant and the respondent jointly, they shall be referred to as 'the parties'.

[6] The applicant is represented by Mr Kauta while Ms Campbell appears for the respondent.

Relief:

[7] The applicant seeks the following relief:

‘1. an order evicting respondent and all persons claiming any right or interest to occupation under the respondent from the premises situated at Farm Reyneveld No. 367, Registration Division “A”, Kunene Region, measuring 3488.7118 hectares, held by Deed of Transfer 4327/2023 (“the property”) within thirty (30) days after service of this order on the respondent.

2. an order authorising and directing the Deputy Sheriff to evict the respondent and all person (sic) holding occupation through the respondent from the property in the event that the respondent or any other do not vacate the property in the time prescribed in prayer 1 hereof.

3. Ordering the Respondent to pay the costs of this application.

4. Granting the applicant further or alternative relief as this Honourable Court deems fit.’

[8] The respondent, on the other hand, claims the following relief in her counter-application:

‘1. an Order that the application under case number HC-MD-CIV-MOT-GEN-2023/00442 be stayed pending the final determination of the action under case number HC-MD-CIV-ACT-CON-2023/04629.

2. an Order that the costs of the counter-application be paid by the Applicant.

3. Further and/or alternative relief.’

Pleadings and evidence

[9] The applicant deposed to the founding affidavit and stated that on 20 June 2022, he purchased Farm Reyneveld No. 367, Registration Division "A", Kunene Region, measuring 3488.7118 hectares, held by Deed of Transfer 4327/2023 ('the property') at a sale in execution for an amount of N\$4,5 million. The sale was a result of Standard Bank Namibia Limited (the judgment creditor) seeking to execute a judgment that it had obtained against the respondent and her late husband.

[10] The applicant deposed that on 21 June 2022, he complied with his obligations in terms of the conditions of sale, and effected payment to the Deputy Sheriff of Outjo in the amount of N\$621 800. The said amount comprised of the following fees and charges:

- (a) The deposit amount of N\$450 000;
- (b) The commission in the amount of N\$158 000;
- (c) The land tax in the amount of N\$13 800.

[11] The applicant deposed further that on 31 January 2023, the Ministry of Lands and Resettlement issued a waiver in respect of the property, thus making the full purchase price due and payable. The applicant deposed that on 7 February 2023, he paid the remainder of the purchase price in the amount of N\$4 418 792,01. On 7 August 2023, the property was transferred and registered in his name.

[12] The applicant deposed further that despite the sale in execution and the transfer of ownership to him, the respondent remains in occupation of the property, thus denying him the right of occupancy and enjoyment of the property. He, therefore, prayed for an eviction order with costs.

[13] The respondent, in her answering affidavit deposed that she was married in community of property to the late Willem Johannes Groenewald (the deceased), and was duly appointed the executrix of his estate. She deposed that at all material times, the deceased was the registered owner of the property. She confirmed that the property was sold to the applicant at a sale in execution resulting in the transfer of the property to the applicant on 7 August 2023.

[14] The respondent, however, denies the version that the applicant is the lawful owner of the property. She deposed that no specific leave was granted by the Master of the High Court (Master) in terms of s 30 of the Administration of Estates Act, 1965 (Estates Act), to sell and transfer the property in execution, rendering the sale in execution null and void.

[15] The respondent further deposed that the sale agreement was cancelled prior to the transfer, and the Deputy Sheriff did not authorise the transfer of the property.

[16] The respondent further deposed that the applicant knew or should reasonably have foreseen that the validity of the transfer and his title to the property would be challenged, based on the following:

(a) the absence of leave from the Master as required by s 30 of the Estates Act;

(b) that the applicant's legal practitioner of record, Mr Kauta, is the same legal practitioner who represented Standard Bank in application proceedings under case number HC-MD-CIV-MOT-GEN-2023/00170 (the main application), instituted before the present matter, where the validity of the sale in execution of the property was challenged;

(c) that on 18 September 2023, the parties jointly reported to court that the respondent would withdraw the main application on the basis that she would commence action against, inter alia, Standard Bank and the applicant in respect of the transfer of the property and which application was withdrawn on 18 September 2023.

[17] Furthermore, the respondent deposed that there are action proceedings instituted on 11 October 2023, under case number HC-MD-CIV-ACT-CON-2023/04629 (action proceedings) pending before this court where she challenges the applicant's title to the property and seeks an order to set aside the sale and transfer of the property to the applicant. She also seeks an order directing the Registrar of Deeds to cancel the transfer and registration of the property to the applicant and to ensure that the property is re-registered in the names of the deceased. On this basis,

she denied that she is in unlawful occupation of the property. She thereafter, prayed for a dismissal of the applicant's application or in the alternative, a stay of proceedings pending the determination of the action proceedings. The respondent further filed a notice of counter-application where she seeks a stay of this application.

[18] The respondent deposed further that before the transfer of the property to the applicant, she launched the main application. On 9 May 2023, the applicant and the Deputy Sheriff concluded a Cancellation Agreement where the Sale Agreement was cancelled and the Deputy Sheriff undertook to instruct the applicant's legal practitioners (Dr Weder, Kauta & Hoveka Inc ('WKH')) to repay the purchase price to the applicant. She deposed further that, subsequently, she concluded a written agreement with the applicant on 30 May 2023, where the material terms were that the applicant confirmed that the conditions of sale were terminated and that the respondent would withdraw the main application against the applicant.

[19] The respondent deposed further that on 10 August 2023, WKH (who acted for Standard Bank then) prepared a joint status report stating that the applicant and the Deputy Sheriff gave instructions to WKH to transfer the property to the applicant. The respondent states that no disclosure of reinstatement of the cancelled Sale Agreement or the intention to transfer the property was made to her. She also contended that the transfer contravened rule 110 of the Rules of this court.

[20] The respondent filed an affidavit of Mr Marthinus Theunis Alberts (Deputy Sheriff) in support of her contention against the application. The Deputy Sheriff deposed, inter alia, that pursuant to a writ of execution against immovable property, he sold the property to the applicant on 22 June 2022. The applicant paid 10 percent deposit; arrear land tax and the auctioneer's commission. On 25 November 2022, he signed a power of attorney to transfer the property to the applicant. On 9 May 2023, he received a settlement agreement from the applicant's erstwhile legal representatives to cancel the sale of the property which he agreed to and signed.

[21] The Deputy Sheriff deposed further that on 8 June 2023, he received a cancellation letter of the sale of the property from the applicant's erstwhile legal practitioners. The said legal practitioners demanded repayment of the auctioneer's commission and the land tax totalling an amount of N\$176 000. He repaid the

amount. Without any prior communication, the amount of N\$176 000 was repaid into his bank account by the applicant's said legal practitioners.

[22] The Deputy Sheriff deposed further that on 11 August 2023, he was telephoned by Mr Van Vuuren, the legal practitioner for the respondent and informed him that the property was transferred in the name of the applicant on 7 August 2023. The Deputy Sheriff deposed that he could not understand how the transfer occurred as, together with the applicant, they signed a cancellation of the sale agreement and he also received a notice of cancellation of the agreement. He stated further he did not instruct WHK to proceed with the transfer of the property after signing the cancellation agreement.

[23] In the replying affidavit, the applicant deposed, inter alia, that the Supreme Court declared the property executable on 4 October 2021, and this order has not been challenged or set aside. He deposed further that the respondent and the deceased ceased being joint owners of the property when it was attached by the Deputy Sheriff on 20 October 2021 in terms of the Supreme Court order. He stated that according to the Agricultural (Commercial) Land reform Act, 1995 ('the Land Reform Act'), the respondent was no longer the owner of the property despite been married to the deceased in community of property. He deposed that the respondent's counsel brought to the attention of the Supreme Court the fact that the deceased had passed on, and that notwithstanding, the Supreme Court declared the property executable. On this basis, he contended, s 30 of the Estates Act does not assist the respondent. Accordingly, he deposed, the estate of the deceased is also a judgment debtor.

[24] The applicant deposed further that he purchased the property from the Deputy Sheriff. He stated further that the sale was conditional on compliance with his obligations. He deposed that in terms of rule 110, only a judge may terminate a sale in execution and that did not occur in this matter. He referred to the Power of Attorney to give transfer signed by the Deputy Sheriff on 25 November 2022 as evidence that the Deputy Sheriff authorised the transfer. He deposed further that the Deputy Sheriff provided a land tax clearance for the transfer and registration of the property in the names of the applicant. On 9 August 2023, the Deputy Sheriff demanded payment of N\$14 884,60 in terms of clause 8 of the conditions of sale for the auctioneer's charges, transfer duties and arrear land taxes. On this basis, the

applicant contented that it can hardly be said that the Deputy Sheriff was unaware of the transfer of the property to the applicant's name.

[25] The applicant confirmed that he concluded a cancellation agreement, but proceeded to depose that, at the time, he acted under an erroneous but mistaken belief that the parties could terminate the agreement *inter partes* without the involvement of the court.

[26] With respect to the affidavit of the Deputy Sheriff, the applicant deposed that although he signed the cancellation agreement with the Deputy Sheriff, the sale was not cancelled. This is because the Deputy Sheriff may only cancel a sale in execution if the purchaser fails to comply with his obligations, which did not happen here. He deposed further that the cancellation agreement arose from the frustrations he endured with the Deputy Sheriff for failing to take necessary steps to give him possession of the property.

[27] In respect of the counter-application, the applicant deposed that such is defective as no supporting affidavit was filed in support of the relief sought. He concluded that the attempt to stay the application is employed as a delaying tactic in the ejectment of the respondent from the property.

Arguments in brief

[28] Mr Kauta argued that the respondent is a mala fide non owner of the property who has no right to occupy the property, but only a right of compensation, if proven, after leaving the property. He submitted that there is no merit in the opposition mounted against the application on the basis that the Deputy Sheriff, after the sale in execution, signed a power of attorney to effect transfer of the property to the name of the applicant. He argued that the respondent fails to restore the property that she obtained by spoliation.

[29] Mr Kauta argued that in terms of the Land Reform Act, an owner of the land is the person in whose name the land is registered, and includes, where property is attached through a court order, the sheriff or deputy sheriff concerned. He argued that after attachment as per the writ of execution against immovable property on 20 October 2021, the respondent was no longer the owner of the property. He

submitted further that the transfer and registration of the property in the name of the applicant is evidence that the applicant is the owner of the property. This, he submitted, asserts the applicant's eviction claim based on *rei vindicatio*.

[30] Mr Kauta further argued that reliance on the cancellation agreement signed by the Deputy Sheriff cannot be sustained as the Deputy Sheriff has no such authority to cancel the agreement. He submitted that only this court can, in terms of rule 110(10) cancel a sale in execution.

[31] In respect of the applicability of s 30 of the Estates Act to the matter, Mr Kauta argued that no leave was required from the Master for the sale in execution to occur, as the Supreme Court had already declared the property executable.

[32] Mr Kauta argued that the stay of proceedings sought by the respondent, if granted, would constitute an interdict against the applicant not to enjoy his property for an indeterminate period in the future. This, he submitted, is worsened by the fact that no tender was made by the respondent to pay rental for the utilisation of the property. He contended that the cause of action raised by the respondent in the action proceedings cannot support a claim for *lis pendens*. He called for the application to be upheld.

[33] Ms Campbell, in equal measure, argued that the sale does not comply with s 30 of the Estates Act. She submitted that a general authorisation contained in the Supreme Court judgment was insufficient to comply with s 30. She relied on the judgment of *Knox NO v Mofokeng & Others*,¹ for the contention that a specific direction was required from the court to demonstrate compliance with s 30. She submitted that for want of compliance with s 30, the sale and registration of the property in the name of the applicant was unlawful and thus invalid.

[34] Ms Campbell further argued that the applicant was well aware, by the time of the registration of the property, that the validity of the sale was challenged. On such premise, she submitted, the registration of the property in his name cannot be that of a bona fide purchaser.

[35] Ms Campbell further argued that the applicant's contention that, in terms of rule 110(10), the Deputy Sheriff cannot lawfully cancel a sale in execution cannot be

¹ *Knox NO v Mofokeng & Others* 2013 (4) SA 46 (GSJ).

sustained. She submitted that once a sale has been concluded between the Deputy Sheriff and the purchaser, their relationship is akin to a contractual relationship between contracting parties. She argued that the two parties *in casu*, agreed to the cancellation of the sale. She drove the point home by emphasising that the Deputy Sheriff deposed to an affidavit stating that he did not authorise the registration of the property in the name of the applicant. She thus prayed for the application to be dismissed with costs.

Analysis

[36] It is established law that where a claim for eviction is based on ownership, all that is required from the claimant is to prove ownership of the immovable property held by another person. That is a claim based on *rei vindicatio*. The claimant would have proven ownership by merely producing a title deed showing that the property is registered in his or her name.

[37] Trengove, J considered a claim for ejectment in *Akbar v Patel*,² and remarked as follows at 109:

‘According to our law, where a plaintiff’s claim for the recovery of possession or for ejectment is based on his ownership of the property involved, his cause of action is simply the fact of his ownership coupled with the fact that possession is held by the defendant. (*Graham v Ridley*, 1931 T.P.D. 476; *Krugersdorp Town Council v Fortuin*, 1965 (2) SA 335 (T) at p. 336 and the authorities there cited). This principle, as far as I am aware, applies to any claim for ejectment founded on ownership, irrespective of the circumstances which have given rise to such claim. As long as the claim is based on the plaintiff’s ownership of the property, the fact that it arises out of an inchoate transaction seems to me to be an irrelevant consideration as far as his cause of action is concerned.’

[38] Levy J in *Shimuadi v Shirungu*,³ remarked that:

‘It is trite that in order to eject a defendant from immovable property, a plaintiff need only allege that he is the owner and that the defendant is in occupation thereof. Should the defendant deny any one of these elements, namely that the plaintiff is the owner or that the defendant is in occupation, the *onus* is on the plaintiff to prove the truth of the element which is denied. The plaintiff would succeed in discharging the *onus* of proof in respect of

² *Akbar v Patel* 1974 (4) SA 104 (T) at 109.

³ *Shimuadi v Shirungu* 1990 (3) SA 344 (SWA) 347B-D.

ownership by providing registered title deeds in his favour. An inference that plaintiff is the owner would then justifiably be drawn. Should the defendant dispute the validity of the title deeds or that ownership, despite the deeds, is of a 'nominal character' (*'nominale aard'*), as in the present case, the *onus* is on the defendant to prove this.'

[39] In the present matter, it is common cause between the parties that the Supreme Court on 4 October 2021, declared the property executable. This was after the Supreme Court was made aware that the deceased had passed on. The first sentence of the judgment of the Supreme Court reads: '[1] At the hearing of this appeal, the court was informed that the second respondent had passed on.' It follows, therefore, in my view that at the time of deciding the appeal, the Supreme Court was aware that the deceased had passed on.

[40] The respondent contended strongly that leave was not obtained from the Master in terms of s 30 of the Estates Act to sell the property. The applicant, on the other hand, contends that the Supreme Court directed the sale when it declared the property executable.

[41] Section 30 of the Estates Act provides that:

'30. Restriction on sale in execution of property in deceased estates

No person charged with the execution of any writ or other process shall –

(a) before the expiry of the period specified in the notice referred to in section *twenty-nine*; or

(b) thereafter, unless, in the case of property of a value not exceeding the amount prescribed, the Master, or in the case of any other property, the Court otherwise directs, [

sell any property in the estate of any deceased person which has been attached whether before or after his death under such writ or process: Provided that the foregoing provisions of this section shall not apply if such first-mentioned person could not have known of the death of the deceased person.'

[42] The parties hotly debated the issue whether the Supreme Court considered and applied the provisions of s 30 of the Estates Act. Ms Campbell submitted that the Supreme Court was required to give specific direction in terms of s 30(b) of the Estates Act. She argued that in line with the decision in *Gounder v ABSA Bank Ltd & Another*,⁴ the Supreme Court ought to have made a specific and pertinent direction for the sale to proceed before at least the first liquidation and distribution account had been approved.

[43] A perusal of the Supreme Court judgment reveals no mention of s 30 of the Estates Act. There is also no indication that the said provision and its effect in this matter, if any, was brought to the attention of the Supreme Court. It could be that the Supreme Court was not fully apprised of the effect of s 30 of the Estates Act. That, notwithstanding, I hold the view that there could be merit in the argument by Ms Campbell that the Supreme Court needed, in keeping with s 30, to give specific and pertinent direction in respect of the property, then owned by the deceased. This issue, is however beyond the jurisdiction of this court. If this matter is to be reconsidered, I am of the considered view that only the Supreme Court may have the necessary jurisdiction to do so.

[44] In the present matter, the decision of the Supreme Court to declare the property executable was not challenged in the pending action proceedings. Correctly so, in my view, as whatever qualms that the respondent may have with the order of the Supreme Court ought to lie before that court and not this court. This is what the principle of hierarchy of courts entail. I, therefore, proceed on the premise that the Supreme Court ordered the property is executable. Such order stands until set aside, and for completeness' sake, it has not been set aside.

[45] The moment the property was attached pursuant to the order of the Supreme Court declaring it executable, the respondent was no longer the owner of the property. Ownership thereafter vested in the Deputy Sheriff. It is also for this reason, in my view that the Deputy Sheriff provided a power of attorney to pass transfer.

⁴ *Gounder v ABSA Bank Ltd & Another* 2008 (3) SA 25 (N).

[46] The law is replete with the proposition that the Deputy Sheriff is not an agent of the judgment creditor or the debtor but is an executive of the court.⁵

[47] The property was sold pursuant to a writ of execution against immovable property on 20 June 2022, where it was purchased for N\$4,5 million. The applicant deposed further that amongst the express conditions of sale were the following:

'6. (a) The purchaser shall pay 10% of the purchase price, related fees and commission to the Deputy Sheriff, and Land Tax (amount available at the auction) on this day of the sale, (refundable) the balance thereof to be secured by a bank or Building Society guarantee, to be approved by Plaintiff's Attorneys, to be furnished to the Deputy Sheriff within 14 days after the date of obtaining the waiver after the sale will be of force and effect.

(b) The purchaser agrees to pay the plaintiff interest calculated and capitalised monthly at the rate of 13.25 per cent per annum. The said interest is to run from 30 days after the date of obtaining the waiver, until the date when the property hereby sold in executor, (sic) is transferred into the name of the purchaser or when the full purchase price has been paid in cash to the plaintiff.

(c) As soon as possible after the sale of the property, the Deputy Sheriff must pay to the Receiver of Revenue, the Land Tax. With the NAMRA Payment Receipt, he will apply for a Land Tax Clearance Certificate at the Department of Land Management. Only with this Certificate can he apply for a waiver.'

[48] Angula DJP in *Standard Bank Namibia Limited v Groenewald*,⁶ had occasion to discuss the role of the Deputy Sheriff conducting a sale in execution and remarked as follows at paras 27 and 34:

'[27] Furthermore, what the Purchaser fails to appreciate is that the sale agreement concluded with the Deputy Sheriff on 19 June 2019 is valid and binding but due to the Purchaser's breach the Deputy Sheriff is forced to seek its cancellation under rule 110(10). Even if the requirements for a plea of *lis pendens* had been met, in the exercise of my discretion, I do not consider it just and equitable to uphold the plea.

...

⁵ *Syfrets Bank Ltd and Others v Sheriff of the Supreme Court, Durban Central, and another; Schoerie NO v Syfrets Bank Ltd and others* 1997 (1) SA 764 (D).

⁶ *Standard Bank Namibia Limited v Groenewald* (I 633/2016) [2023] NAHCMD 296 (6 June 2023) paras 27 and 34.

[34] It should be borne in mind that a valid agreement of sale comes into being at a sale in execution at the fall of the hammer on the terms and conditions set out in the conditions of sale which are displayed, pronounced or read out by the Deputy Sheriff, who is the auctioneer. The purpose of the signing of the conditions of sale is to record and have certainty of the oral contract and its contents, as concluded by the auction sale, and to ensure that the Deputy Sheriff and the Purchaser are bound thereto by reason of their signatures.³⁷

[49] Before the registration of the property in the name of the applicant, the applicant entered into a cancellation agreement with the Deputy Sheriff and a settlement agreement with the respondent. This, the applicant deposed, was out of a mistake as all that was required was for him to comply with his obligations, and the sale could only be cancelled upon his (the purchaser) failure to comply with his obligations.

[50] It is deposed to by the applicant that before the registration of the property in his name, and after the conclusion of the cancellation agreements, the Deputy Sheriff demanded payment of the charges and land taxes provided for in clause 8 of the conditions of sale. The banking details of the Deputy Sheriff were as a result requested in order to pay in the said account for the auctioneer's commission and the land tax which had earlier been claimed. The banking details were provided and the said payments were made to the bank account of the Deputy Sheriff. This, coupled with the fact that the Deputy Sheriff after selling the property to the applicant provided the power of attorney to the applicant, which was not cancelled or retracted, authorised the applicant to register the property to his name.

[51] I, therefore find on the strength of the decision of the Supreme Court that ownership of the property passed to the Deputy Sheriff when the property was declared executable. The Deputy Sheriff sold the property to the applicant, who purchased and registered the property in his name. Ownership was therefore, transferred from the Deputy Sheriff to the applicant. The applicant thus ought to enjoy the benefits of being the registered owner of the property.

[52] I have carefully considered the respondent's prayers in the pending action proceedings. I am of the considered view that, in as much the respondent challenges

the sale and the registration of the property, the fact that the decision of the Supreme Court is left intact, suggests that the respondent's claim to ownership cannot be sustained. It is plain that ownership of the property passed to the applicant consequent to the decision of the Supreme Court.

[53] In respect of *lis pendens*,⁷ I find that although the pending action proceedings relate to the same matter as in *casu* and between the same parties, I hold the view that staying the proceedings, especially in light of the intact order of the Supreme Court (*supra*), and the conclusions reached above to the effect that the sale in execution and the registration of the property in the name of the applicant are valid, the balance of convenience does not favour a stay of the proceedings. I find that it will offend the objective of the rules of speedy finalisation of matters to stay the proceedings considering the conclusions reached above.

Conclusion

[54] After considering the evidence led in its totality, I find that the applicant succeeded to prove ownership of the property and thus entitlement to an order to evict the respondent from the property.

[55] In the same vein, I find that the respondent's claim to dismiss the applicant's claim, alternatively to stay these proceedings pending the finalisation of the action proceedings lacks merits. A stay of this application, would in view of the findings made hereinabove, constitute delaying the applicant's right to enjoyment of the property. What is worse for the respondent is that, in seeking a stay of proceedings, she did not offer to pay occupational rent.

Costs

[56] Costs ordinarily follow the result. No different proposition was advanced by either of the parties. The applicant succeeded to prove entitlement to evict the respondent from the property, and should accordingly be awarded costs. The applicant shall therefore be awarded his costs.

Order

⁷ *Schuette v Schuette* (HC-MD-CIV-MOT-GEN-2019-00376) NAHCMD 426 (18 September 2020).

[57] In the result, it is ordered that:

1. The respondent and all persons claiming any right or interest to occupation of the premises situated at Farm Reyneveld No. 367, Registration Division "A", Kunene Region, measuring 3488.7118 hectares, held by Deed of Transfer 4327/2023 ("the property") must, within thirty (30) days after service of this order on the respondent, vacate the property.
2. The Deputy Sheriff is authorised and directed to evict the respondent and all persons holding occupation through the respondent from the property in the event that the respondent or any other do not vacate the property within thirty (30) days after service of this order on the respondent.
3. The respondent must pay the costs of the applicant.
4. The matter is regarded as finalised and removed from the roll.

O S Sibeya
Judge

APPEARANCE:

APPLICANT:

P Kauta

Of Dr Weder, Kauta & Hoveka Inc, Windhoek.

RESPONDENT:

Y Campbell

Instructed by Kruger, Van Vuuren & Co,
Windhoek.