



Republic of Namibia

MINISTERIAL MOTIVATION

ON THE

HIGH COURT AMENDMENT BILL

IN THE NATIONAL ASSEMBLY

BY

THE MINISTER OF JUSTICE

MS. YVONNE DAUSAB, MP

18 February 2021

– To be checked against delivery –

Honourable Speaker,
Honourable Members,
Members of the public,

1. In the case of *Standard Bank v Magdalena Shipala and 4 Others*¹ delivered on July 6, 2018, the Supreme Court held that “the issue before the court *a quo* (the High Court), as well as on appeal, was whether the provisions of Rule 108 of the Rules of the High Court apply in an application for an order declaring immovable property belonging to a judgment debtor specially executable”. The High Court ruled in favour of this submission.²
2. The right to adequate housing is a recognized human right that falls within the sphere of economic, social and cultural rights. This right is recognized in the Universal Declaration of Human Rights and International Covenant on Economic, Social and Cultural Rights, to which Namibia is a State Party. International Human Rights Law recognizes everyone’s right to an adequate standard of living, including adequate housing.
3. In light of the effect of the judgment, weighed against the right to adequate housing, the Ministry of Justice obtained Cabinet Approval to amend the High Court Act, 1990 and the Magistrates’ Court Act, 1944 to make provision in the Principle Act for judicial oversight in matters affecting parties in the sale of immovable property.
4. The anticipated amendments will provide for judicial oversight in matters affecting parties who expect the courts to be the protector of their rights. The delivery of justice will be enhanced and the rights of litigants and debtor will be protected.

Honourable Speaker,

¹ Case No.: SA 69/2015.

² Rule 108 of the High Court provides that the registrar may not issue a writ of execution against immovable property unless a *nulla bona* return has been issued and where a court has on application declared the immovable property specially executable.

**Honourable Members,
Members of the public,**

5. The amendment of section 39 of the High Court Act, 1990 (Act No. 16 of 1990) is necessary to enable the Judge-President to make rules that regulate the right of cession in matters before the High Court, to insert a provision which enables the Judge-President to make rules regulating the appointment, administration, security, jurisdiction and the fees of deputy-sheriffs and assistants to deputy-sheriffs. Furthermore, to make rules relating to the conduct and disciplinary procedures of deputy-sheriffs.
6. Firstly, in respect of the cession of rights - the arrangement will be that the litigant then “cedes” his or her right to institute proceedings to the unqualified person in return for payment when the case is concluded. In reality there will be no genuine cession of rights by the litigant yet the purported cession enables the unqualified person to institute proceedings as if he or she is the litigant in the matter. Once the matter is concluded the unqualified person obtains whatever remedy is granted on behalf of the real litigant and gets paid for his or her “services”.
7. There is clearly a circumvention of the Legal Practitioners Act, 1995 (Act No. 15 of 1995) which prohibits persons from acting on behalf of other persons in legal proceedings unless they are registered as legal practitioners under that Act. Having noted this illegal mechanism, the Judge-President introduced rule 5 into the Rules of the High Court in 2014. This rule requires a person who claims to have acquired a right to institute legal proceedings through a cession to comply with certain requirements. These include a requirement that the person ceding the rights must make a sworn declaration confirming the cession. The declaration must be filed with the registrar at the time of instituting any proceedings. If the person makes a false declaration he or she liable to criminal sanctions.
8. The validity of this Rule was challenged in the High Court on the basis that the Judge-President acted *ultra vires* because the High Court Act does not authorize him

to make such a rule. The Court dismissed the case but the decision has now been appealed. In order to settle the matter beyond doubt the proposed amendment to section 39 of the High Court Act, 1990 seeks to explicitly empower the Judge-President, to make rules regulating the process of cessions and ancillary matters in the High Court.

Honourable Speaker,
Honourable Members,
Members of the public,

9. The Bill also amends section 39(1)(a)(iii) of the High Court Act, 1990 by inserting a new section 39(1)(h). The proposed section 39(1)(h) deals with additional amendments relating to the framework governing the appointment of deputy-sheriffs, assistants to deputy-sheriffs as well as acting deputy-sheriffs. In respect of these provisions, I submit that a transparent, competency-based recruitment and appointment process for the appointment of deputy-sheriffs is needed to ensure the most suitable candidates are appointed and that all interested applicants are afforded a fair opportunity to apply and be considered.
10. The objective of the proposed legislation is to enable the Judge-President to make rules regulating the appointment, administration, security, jurisdiction and the fees of deputy-sheriffs and assistants to deputy-sheriffs and to make rules relating to the conduct and disciplinary procedures of deputy-sheriffs.

Honourable Speaker,
Honourable Members,
Members of the public,

11. I would like to implore this August House to support the High Court Amendment Bill to demonstrate the Government's resolve to serve justice to our people.

I thank you and so submit.