
MAGISTRATE COURT'S COURT AMENDMENT BILL

Contribution by Hon. Thimotheus Ndumba Shihumbu on the Magistrate's Court Amendment Bill that was tabled by Hon Yvonne Dausab on the 18th February 2021.

Honourable Speaker,
Honourable members of the legislative body,
Members of the public,

1. This afternoon I elevate to deliver my short contribution on this important amendment bill under discussion.
2. More than two centuries ago, Adam Smith noted that being able to afford certain commodities was a necessity in engaging in public life without shame or disgrace.
3. To this end access to justice is both an independent human right and a crucial means to enforce other substantive rights. Namibia has a progressive, modern constitution, guaranteeing an impressive set of rights for the individual. Yet without a realistic means to enforce those rights, substantive guarantees can far too easily become merely a set of empty promises.
4. The Constitution of Namibia guarantees access to justice. But some legal procedures limit the ability of individuals, particularly marginalised populations, to access the courts.
5. Despite the great progress achieved over the years to amend our laws by those who were here long before us, there is a dire need to examine our legislations to address circumstances and events that were not foreseen when pieces of legislations were initially signed into laws.
6. *honourable speaker / Honourable members*
The amendment bill to the Magistrate's court to increase the monetary jurisdiction form part of the effort of the Civil Justice Reform to provide a speedy, affordable, simple and accessible civil justice system for the adjudication of civil dispute by the courts.

7. Namibia is a developing country in terms of our laws, our economy and our population therefore it is prudent to look at some of our legislations that are currently governing us such as this, to make some necessary adjustments where it is required to meet the prevailing needs of our people especially those who seek protection from our institutions.
8. The judicial statistics empirical evidence in our courts setup is alarming and constantly reminding us all how our lower courts are seized with serious backlog of criminal and civil matters as a result of shortages of support staff and magistrate officers to rapidly respond to the dire needs of our people and for those of us who have served the ministry of justice or the office of the judiciary will agree with me that members of the public who seek protection from our lower courts find it very difficult to enjoy their full constitutional right to litigate in our courts.
9. The following lower courts alone, Outapi, Ohangwena Oshakati and Rundu Magistrate's court are some of the few courts that I can relate, clearly show how magistrates and their staff complaints are frustrated in dealing with loads of matters that keeps on piling up and that will never be trimmed down unless we fix the existing source of difficulties or our courts will one day collapse given the service demands.

deputy
Honorable Speaker, Honorable members

10. Rundu magistrate court alone hosts only 4 magistrate officers that preside over 7 court rooms with one clerk who provides clerical services in civil litigations, estate administration as per a directive imposed on the clerk who hardly received proper training of the know how to handle the estate matters, liquor licences, Domestic violence reports that come to court and maintenance business every day for 7 court rooms of all matters in both Kavango west and east regions to which Civil matters are only heard on Fridays not because of the low influx of civil matters but as a result of lack of judiciary officers and support staff to decongest the court rolls or workloads.
11. At the regional courts in the northern regions, members of the public and officials have over the years begged and continue to beg the ministry of justice and magistrate service commission to increase the number of judicial officers or recruit sufficient magistrate officers to deal with the lack of manpower affecting the progress of our courts which the society is always at the receiving end, because your ministry continues to ignore and has refused to entertain the needs of our courts to effectively render judiciary services to our citizens.
12. No amount of justification from your ministry will ever satisfy the monetary and time loss of our citizens who spend hours and days queuing up all day, waiting for their matters to be adjudicated only to be told time and time again

that your matter is postponed to further dates as a result of your ministry's failure to address the needs of our courts, this is a court of law we are talking about not some sluggish home affair ministry.

Honorable deputy speaker / Honorable members

13. This magistrate's court amendment bill is a very unique bill in its entirety and a real deal mentation and a well-conceived undertaking from your ministry and your partners in the effort to bringing services closer to our people which I believe as a minister you have done your checks and balances but I am requesting this honourable house to look at the following aspects.

13.1. It's an open secret that our lower courts do not have the capacity in terms of staff compliments to enhance service deliver, figure that out!

13.2. The magistrate officers that preside over civil matters in our lower courts are also adjudicating criminal cases at all instances and they are frustrated due the amount workloads that will never be reduced unless your ministry adjust the staff compliments, figure that out!

13.3. To increase the monetary jurisdiction of the magistrate's court under this bill from N\$ 25 000.00 to N\$ 1 000 000 under the said causes of actions is far-fetched, unless you want to further diminish the reputation of the lower courts that are already in the spotlight for lack of human and financial resources, figure that out!

Honorable deputy speaker / Honorable members

13.4. It is in my consideration that we are about to strangle a premature new born baby, should we proceed to mount pressure or put a strain on our already fragile lower courts should we not use the scale of justice to balance between equitable administration of justice and service delivery and the need to bring services closer to many people as possible to access the courts in civil cases.

14. Looking at the insertion of section 66A to restrict the sale of immovable property in execution of a court judgement unless the court is satisfied that the judgement debtor has insufficient movable property to satisfy the judgement debt or unless has declared the immovable property to be executable upon the application of the judgement credit something we should express our gratitude towards the minister and partners. *and I take my hat off for that.*

15. To this end, I wholeheartedly welcome this insertion although it has been long overdue to protect our people from abuse.

Honorable deputy speaker / Honorable members

16. It reminds me of a family friend of mine whose only primary immovable property, a small 3 bedroom home that housed a family of 6 was mercilessly executed after the judgement creditor was awarded the execution victory

upon application was left in the horror of darkness of the night and death, the crying voices of his wife and children for being thrown on the street is still so vivid as if it happened last night, there are many more Namibians who has suffered or their only primary immovable properties taken away without due consideration of human dignity or allow the parties to investigate whether they can find other solutions or the judgement debtors being given the opportunities to make their representations before their primary immovable properties are taken into execution.

John
Honourable speaker, Honourable members,

17. In conclusion; I pray to this honourable house that we must weigh the much needed cost effective measures in that our people will no longer travel long distances to litigate their civil matters at the high courts but at their nearest respective lower courts and a strain or the amount of work that will ultimately be offloaded in the already depressed lower courts.

18. I further pray to this honourable house that the amendment of section 29 (1) of the Magistrate court's Act of 1944 in monetary jurisdiction should only be increased from N\$ 25 000 to N\$ 300 000 given the severity of work load that already exist at the courts.

I so move Honourable speaker..