

REPUBLIC OF NAMIBIA

NATIONAL ASSEMBLY

**HIGH COURT
AMENDMENT BILL**

(As read a First Time)

(Introduced by the Minister of Justice)

[B. 18 - 2023]

EXPLANATORY NOTE:

- _____ Words underlined with a solid line indicate insertions in existing provisions.
- [] Words in bold type in square brackets indicate omissions from existing provisions.

BILL

To **amend the High Court Act, 1990, so as to insert a definition of “primary home”; to impose restrictions on the sale in execution of immovable property; to empower the Judge-President to make rules regulating the procedure for cession of rights for matters brought before the court by certain litigants; to make rules regulating the procedure for the adjudication of commercial disputes; to make rules relating to the appointment, administration, security, jurisdiction and the fees of deputy-sheriffs and assistants to deputy-sheriffs; to make rules relating to the conduct and disciplinary procedures of deputy-sheriffs and assistants to deputy-sheriffs; and to deal with incidental matters.**

(Introduced by the Minister of Justice)

BE IT ENACTED as passed by the Parliament, and assented to by the President, of the Republic of Namibia as follows:

Amendment of section 1 of Act No. 16 of 1990

1. Section 1 of the High Court Act, 1990 (Act No.16 of 1990) (hereafter called “the principal Act”) is amended by the insertion after the definition of “Minister” of the following definition:

“primary home” means a dwelling which a person uses as his or her main place of residence irrespective of whether that person occasionally resides at any other place of residence or owns another place of residence;”.

Insertion of section 35A into Act No. 16 of 1990

2. The principal Act is amended by the insertion after section 35 of the following section:

“Restriction on sale in execution of immovable property

35A. (1) Notwithstanding anything to the contrary contained in this Act or in any other law, including the common law, no person shall sell any immovable property in execution of a judgment of a court unless the sale in execution is carried out under the authority of, and in accordance with, an order of the court issued, after the following requirements have been complied with -

- (a) the court, upon return of service of process by the sheriff or deputy-sheriff of the court, is satisfied that the judgment debtor has insufficient movable property to satisfy the judgment debt; and

(b) the court, upon application made to it by the judgment creditor, has declared the immovable property to be executable.

(2) A person does not need to comply with subsection (1)(a) relating to the requirement to submit a return of service that the debtor has insufficient movable property to satisfy the judgment debt if -

(a) the immovable property to be sold in execution in satisfaction of the judgment is subject to a mortgage bond registered in favour of the judgment creditor; and

(b) failure to satisfy the mortgage bond referred to in paragraph (a) in full or part in by the judgment debtor gave rise to the judgment debt which is the subject matter of the sale in execution.

(3) The court shall not issue an order authorising execution against immovable property of a judgment debtor which, or property is used by the judgment debtor or by any other person as a primary home, unless the court is satisfied, after holding an inquiry in the manner set out in the rules of the court, that the sale of such immovable property is the most appropriate order to satisfy the judgment debt.

(4) If the court after conducting an inquiry as contemplated in subsection (3) is satisfied that a sale in execution of the immovable property is not appropriate in the circumstances of the case it may, having due regard to the interests of the judgment creditor, judgment debtor and any other person using the immovable property as a primary home, make an alternative order which may include but is not limited to -

(a) an order attaching alternative immovable property owned by the judgment debtor;

(b) an order varying the repayment period of the judgment debt or the instalments which are payable in terms of the agreement between the judgment debtor and the judgment creditor;

(c) an order that the debt be taken over by another person chosen by the judgment debtor, including a family member or relative of the judgment debtor, who is willing and able to fulfil the obligation to repay the debt, but subject to an agreement between the judgment debtor and such other person which agreement shall include a condition that ownership of the property remains vested in the judgment debtor, unless the court determines otherwise;

(d) an order allowing the judgment debtor to voluntarily dispose of the immovable property within a specified period of time; or

(e) any other order that the court considers proper and just in the circumstances of the case.

(5) A judgment creditor who fails to make an application referred to in subsection (1)(b) but who wishes to enforce the judgment in the magistrates' court shall, in the manner set out in the rules of the court, transfer the judgment to the magistrates' court for the district in which the judgment debtor resides, conducts business or is employed and for that purpose the judgment creditor shall comply with the provisions of sections 65A to 65M, 66 and 66A of the Magistrates' Courts Act, 1944 (Act No. 32 of 1944) (hereafter "Magistrates' Courts Act").

(6) If a judgment creditor fails to comply with any requirements for the enforcement of a judgment in the court within the time limits as set out in the rules of the court the registrar shall -

- (a) transfer such judgment to the magistrates' court for the district in which the person against whom such judgment was granted resides, conducts business or is employed; and
- (b) notify the judgment creditor of the transfer of the judgment as contemplated in paragraph (a).

(7) Upon transfer of a judgment as contemplated in subsection (6), the provisions of section 65M of the Magistrates' Courts Act shall apply to the transferred judgment and the judgment creditor shall comply with those provisions, except that the provisions of section 65E (4) of that Act shall not apply to any return of service referred to in subsection (1)(a).".

Amendment of section 39 of Act No. 16 of 1990 as amended by section 1 of Act No. 12 of 2013

3. Section 39 of the principal Act is amended in subsection (1) by -

- (b) the insertion after subparagraph (iii) of paragraph (a) of the following subparagraph:

“(iiiA) the manner in which a person who has acquired a right of action through a cession in any cause or matter before the court shall provide documentary evidence of such cession to the registrar by way of a deed of cession or a sworn declaration made by the person who has ceded the right of action, including -

- (aa) the circumstances under which such cession of right of action may be granted;
- (bb) the form and content of the sworn declaration;
- (cc) the manner in which such declaration must be authenticated; and
- (dd) the sanctions for making a false declaration or failing to comply with the requirement for proof of cession of right action;”;

- (b) by the substitution for paragraph (c) of the following paragraph:

“(c) to regulate execution against an immovable property of a judgment debtor where the property is the primary home of such judgment debtor, and may prescribe therein that -

- (i) the sale of such property is by reserve price which shall be based on the market value of the property as [that is] prescribed by the Judge-President in the rules of court;

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- (ii) the property is sold to the highest bidder upon conditions prescribed in the rules of court and further that the bid of such highest bidder may not be less than the prescribed reserve price contemplated in subparagraph (i);
 - (c) the deletion at the end of paragraph (e) of the word “and”; and
 - (d) the addition after paragraph (f) of the following paragraphs:
 - “(g) to regulate the procedure for the adjudication of commercial disputes, and in that behalf may prescribe therein -
 - (i) the type of disputes to which the rules of court relating to commercial disputes apply;
 - (ii) the steps for instituting and defending proceedings in commercial disputes;
 - (iii) circumstances under which commercial disputes may be adjudicated without a trial or hearing;
 - (iv) circumstances under which the court may hear oral evidence;
 - (v) when judgment by default may be granted;
 - (vi) when summary judgment may be granted;
 - (vii) the application of judicial case management;
 - (viii) the determination by the managing judge at the pre-trial conference of the hearing or trial date of a matter;
 - (ix) compulsory submission of the dispute in question to mediation in terms of the rules of court;
 - (x) peremptory time limits within which rulings and judgments must be delivered; and
 - (xi) the manner in which the parties’ settlement agreement in respect of their dispute may be made an order of court and enforced;
 - (h) to, subject to the provisions of section 30, regulate the appointment, administration, security, jurisdiction and the fees of deputy-sheriffs and assistants to deputy-sheriffs who are not staff members of the public service, and may prescribe therein -
 - (i) the requirements, skills and competencies required in the recruitment of deputy-sheriffs to be appointed;

- (ii) the recruitment and evaluation procedures of deputy-sheriffs to be appointed;
 - (iii) the amount of security to be furnished by a deputy-sheriff;
 - (iv) the establishment and administration of trust accounts by deputy-sheriffs;
 - (v) the establishment of the different jurisdictions of appointment for deputy-sheriffs;
 - (vi) the number of deputy-sheriffs to be appointed for each respective jurisdiction of a deputy-sheriff;
 - (vii) the tariff of fees chargeable by deputy-sheriffs;
 - (viii) the procedure for the appointment of an assistant to a deputy-sheriff; and
 - (ix) the procedure for the appointment of an acting deputy-sheriff; and
- (i) to, subject to the provisions of section 31, regulate the conduct and disciplinary procedures of deputy-sheriffs, and may prescribe -
- (i) one or more codes of conduct for deputy-sheriffs and their assistants in performing their functions and exercising their powers under this Act;
 - (ii) the complaints procedures and disciplinary procedures.”.

General amendment of Act No. 16 of 1990

4. The principal Act is amended by the substitution for the words “an officer in the public service” wherever they occur of the words “a staff member in the public service”.

Short title and commencement

5. (1) This Act is called the High Court Amendment Act, 2023 and comes into operation on a date determined by the Minister by notice in the *Gazette*.

(2) Different dates may be determined in terms of subsection (1) for different provisions of the Act.