

# **HIGH COURT AMENDMENT BILL CONTRIBUTION BY HON. MARIA ELAGO**

**Hon. Speaker**  
**Hon. Members**

It is appreciated that what was previously a rule is now a proposed bill. However, does the proposed amendment law benefit the ordinary Namibian person to keep their property?

It is a fact that the mortgage agreement of the creditor is standard agreement that is not subject to amendment by the debtor. In terms of the mortgage agreement, once the debtor fails to pay, the creditor can sue for the entire amount. The proposed amendment bill is aimed at only setting out steps that the creditor must take before selling off the property of the debtor and the oversight of the court.

In some instances, the debtor's default is because of circumstances beyond their control - such as loss of job due to covid 19 and or those that asks to be given a little bit of time to get money to pay off the arrears.

The Namibian Constitution, article 16, protects the right to property- which means the right to acquire, own and dispose of property. It does not protect the right to access to adequate housing. The creditor right to sell the property upon default by the debtor is not limited by article 16, despite that the property may be a primary home for the debtor.

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In Namibia, the effect of the Supreme Court judgement of *Standard Bank vs Shipila*, is that the court can declare the immovable property executable if there is no alternative drastic measures.

In South Africa, the courts stated that it is unjustifiable to grant an execution of a mortgaged property of a debtor where it would deprive the debtor of their section 26 (1) right- that is right to have access to adequate housing.

I have through my reading on the issue of sale of houses by the creditor upon default by the debtor, which is a huge problem for our people, learned that in South Africa there is an act of parliament ( National credit Act 34 of 2005) that provides that the creditor, before going to court to enforce the debt, is compelled to take certain steps including giving notice to a debtor and attempting to resolve the dispute - of arrears-out of court, and that the South African Constitutes provides for the right to access to adequate housing.

Hon Minister, how does the proposed amendment protect the debtor from losing the right to acquire a property -because that right to acquire is interrupted before the debtor can make full payment and own the property?

In some instances, the debtor has been paying the property for 15 years before defaulting, by this time the bank would have been paid more than the capital amount of the loan. However the bank will nonetheless be able to proceed to execute the property if the debtor having lost his job due to covid 19 retrenchment or if the debtor cannot afford to pay his/her insurance or may not be able to pay the arrears, because the creditor's right to sell is not limited by article 16.

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It appears that the proposed amendment will not in the long run protect the ordinary Namibia, especially in the economic times we are facing, to provide housing for themselves and their family. It is a temporary solution. Perhaps we must investigate a long-term solution for our people.

With this contribution, I support the bill.