

# MAGISTRATES' COURT AMENDMENT BILL AND HIGH COURT AMENDMENT BILL

CONTRIBUTION BY HONOURABLE VEIKKO NEKUNDI, MP, DEPUTY MINISTER OF  
WORKS AND TRANSPORT,

25 OCTOBER 2023

NATIONAL ASSEMBLY

**Honourable Speaker, Honourable Members of this August House;**

As the Minister of Justice underscored the issue of sale of immovable properties including properties used by members of the public as primary homes is of paramount importance in our constitutional democracy where respect for people's dignity is constitutionally proclaimed and protected under Article 8 of the Namibian Constitution.

Therefore, the discussion and passing of this bill should not just be a mere formality, but the passing must have meaning to our people. Our people have been suffering greatly at the hands of the banks in this country, with no mercy, they are heartless, who are happy to gain at the expense of the ordinary as they celebrate when they chase them into roofless environment. It is unheard of, when everyone is under financial stress, yet the banks whose profits are protected by laws are making **billions** in profits, they don't even plough back into our society, even now when the nation is faced with severe drought these banks are nowhere to be seen, yet they are over-profiteering from the very same people who are affected by the severe drought and needing help. Therefore, this bill must have no mercy to the banks, instead it must in real sense and meaning advance the interest of the people, our people. This is the testing moment to us here, as their elected

banks have been collecting

people's!

emana

Sanctioning

representatives, whether we are for the banks or for our people, and I am of the conviction that we must stand on the side of our people, no matter what, our people matters, just as **black lives matter!!!**

**Comrade Deputy Speaker, Honourable Members,**

We must understand and appreciate that no mortgagor with sense and logic will just withdraw paying his or her mortgage, none whatsoever, there must be serious reasons beyond the mortgagor abilities. Therefore, homes are central to human lives and build confidence in families, in particular the children. Children get badly affected, to the extent that it affects their education, imagine a learner in a class when they were just evicted yesterday from their home, seeing their father or mother crying, yet can't explain why they are crying, the future of this child is completely shattered to the core. This child will feel and behave orphan, therefore the moment has arrived when this August House should stand firm in the protection of our people and children in particular who should never be made artificial orphans at the hands of the banks.

With pain, over the years there have been increasing reported cases of members of the public losing their immovable properties including their primary homes in the circumstances where no reasonable steps were taken to give enough opportunity to members of the public affected to settle their debts with creditors, so as not to lose their homes. Therefore, this bill must ensure that the courts at all cost protect homeowners and their families. Cognizant that a person who can't afford to honour his or her home loan repayment is in a financial stress, certainly will not be able to hire a lawyer for

representation, and these banks have the billions, which they unethically acquired and heartlessness. As such, the very first important matter for this bill to have meaning is for the State to provide legal aid under the current legal aid scheme to provide legal services to homeowners at risk of losing their houses and not only to defend them at courts but also to negotiate with the lenders.

### **Comrade Deputy Speaker**

Honourable Deputy Speaker, Honourable Members on the current content of the bill I wish to comment as follows:

First, the Bill defines “primary home” as follows:

““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.”

I am wondering as to why we only seek to protect the primary home which a person uses as his/her main place of residence.

Many of our people, because of the structure of our economy, have been forced to have at least two or more places of residence for many reasons. One of these reasons is that people are forced to leave their villages and hometowns in outlying areas of this country to work at other places particularly in major cities such as Windhoek, Swakopmund and Walvis Bay, very soon Lüderitz. This situation causes a situation where you would find a person with at least two main places of residence; one in Windhoek, possibly with some members of the family i.e., children, and one in the hometown i.e., Uis where the wife or husband with some children also reside.

The definition of “primary home” appears to only to protect a single “main” primary home which fits the description of the “main” place of residence.

I caution that there may be potential unending disputes on the definition of “primary home” in situations I sketched above.

I am therefore submitting that this definition of “primary home” be changed in capable of including at least 2 (two) or more primary residences depending on the special facts of a particular case.

Honourable Speaker, Honourable members.

Lastly, another concern I have is on section 3 of the Bill that seeks to amend section 39 of the main Act.

I in particular refer to section 3 seeking to substitute paragraph (c) of the main Act by amongst others providing that:

“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.”

I am questioning as to why we seek only to protect the primary home which are to be sold below the market price.

There had been reported cases where non-residential and business properties worth millions of Namibian dollars sold unjustifiably and inequitably lower than the market prices to the prejudice of judgment debtors.

I propose that the requirement that a property must be sold by a reserved price which shall be based on the market value must apply to all immovable properties, whether they are residential or not.

Section 7 of amending section 66A of the principle Act, 4(b) should be changed to speak of loan modification, in that loan modification is properly broad in the interest of the judgment debtor. In that it includes loan term changes, interest rate reduction, loan structure changes (fixed-rate loan), principal forbearance and forbearance an important factor giving the judgment debtor reasonable space to financially recover. Comrades, Honourable members of this August House, these are substantive and should be incorporated in the bill without compromise, our voice must be clear with no inch of ambiguity for the benefit of our people.

**I so submit.**