

NATIONAL ASSEMBLY

Contribution by Hon. Elma J. Dienda, MP (PDM) to the Debate on Second Reading – *Magistrates' Court Amendment Bill* [B. 17 – 2023]

Wednesday, November 1, 2023

Thank you Hon. Speaker,

1. I rise to speak to the Magistrate Court Amendment Bill 2023. The Bill, which amends its principal Act (Magistrates' Courts Act, 1944), is intended to address critical gaps in Namibia's judicial framework arising from technical change as far as sales in execution of immovable property and the jurisdiction of magistrates' courts are concerned.
2. I thank the Hon. Minister of Justice for bringing forward this Bill at the earliest opportunity to allow Honorable Members to debate diligently, properly and in good conscience. Hon. Members for the past years we read in the news papers about the eviction of people from their houses in the whole country. People from all walks of life are being affected by this. Hundreds of people have been forcibly evicted because of outstanding legal protection and ambitious housing policies.

3. **Hon. Members**, according to data from the Bank of Namibia (BoN), Namibian households on average spend at least more than 17% of their income on servicing loans from banking institutions. What's more, commercial banks have repossessed unsold residential properties valued at N\$251 million in the past five years until the end of June last year.

4. Just recently, the director of the Legal Assistance Centre (LAC), Toni Hancox has called on the courts to consider whether homes being put up for sale are individuals' primary residences. **Hon. Members**, the practice of putting up for sale people's primary residences is inconsistent with article 8 (*respect for human dignity*) of our Constitution.

5. If not restricted or properly regulated, commercial banks will keep repossessing our people's homes, for we know that it is not easy mounting a legal challenge against these profit-driven banks. It was further reported in one of the local dailies that 10 houses are listed for attachment on a weekly basis.¹ This is the essence of this Amendment Bill. To impose restrictions on the sale in execution of immovable property. I, therefore, welcome section 66A. (1) of the Amendment Bill [**Restriction on sale in execution of immovable property**].

¹The Namibian (2023).

6. Magistrates, prosecutors and lawyers occupy a critical and sensitive place in society; the way they conduct themselves has a direct impact on public confidence and the administration of justice. Independence, impartiality and integrity are the basis of the rule of law in a healthy democracy and ensure the protection of human rights, including *respect for human dignity*.

7. **Hon. Members**, imagine that you default on your home-loan repayment for two months because you've lost your job, and the bank is threatening to repossess your home, for which you've been paying a good N\$15,000 per month, for the past 15 years. How would you feel? Repossession must truly be a measure of last resort.

8. If you've never been in a situation where you needed the help of an attorney to save your home from repossession, you may not have a clear picture of how this Bill Must protect our Citizens?

9. The legal system affects our society in many ways, and lawyers contribute to the growth and freedom of society. Attorneys who

practice law with ethics and integrity [should] contribute to the well-being of society by promoting justice through fair procedures. They are advocates and advisors for our society. Justice is one of the most important ideals in our society; it's what we strive for in order to create a fair and equitable world. Magistrates carry the responsibility of maintaining the integrity of our justice system in lower courts.

10. **Hon. Members**, research has shown a clear correlation between an effective justice system and democracy, the rule of law, investment and peace and stability. Lawyers work to hold corporations, organizations and sometimes even the government, accountable. In today's globalized world, big corporations attempt to take advantage of individuals or small party of individuals, and in cases like that, you need an attorney to protect the individual's rights, and keep the bigger party from strong-arming the smaller party.

11. The wheels of justice are turning ever so slowly in this country, which has often been called a 'model of stability and democracy'. So slow that the Constitutional right to a fair trial is

no longer always guaranteed. Even more, defendants are denied their right to legal representation because they cannot afford private lawyers, and the state-provided legal aid has limited availability. Because of staff shortages, the prosecution service is faced with a large backlog of cases, often resulting in long pre-trial detentions. As mutual trust cannot be blind trust, magistrates are in fact called on to act as guardians of Namibia's rule of law. As a firm believer in the inherent dignity of the human person, I am confident that this Bill will protect our personal liberties and rights by employing more magistrates, prosecutors and legal aid lawyers.

12. I will therefore propose the following:

1. That this Bill be send to the relevant Standing Committee to do Public Engagements.
2. That the poor not to be evicted without any alternative accommodation.
3. Section 65 F. (1) what prove do we have that the Balju (messenger) or The Deputy Sheriff of the court really handed

over the documents. Are they really serving the people with these documents.

4. Who appointed the Balju (deputy Sheriff)?
5. How are they appointed, are these positions meant to be permanent, if yes how will transparency kick in.
6. Housing laws and policies need to fully account for special housing needs

I thank you.