



REPUBLIC OF NAMIBIA

MINISTRY OF JUSTICE

**OPENING REMARKS BY THE HONOURABLE MR. SAKEUS E.T. SHANGHALA,
MP MINISTER OF JUSTICE AT THE STAKEHOLDER CONSULTATION ON THE
AMENDMENT OF THE HIGH COURT ACT, 1990, AND THE MAGISTRATES'
COURT ACT, 1944**

To be checked against delivery

**WINDHOEK COUNTRY CLUB,
WINDHOEK, NAMIBIA
6 DECEMBER 2018**

Esteemed members of the banking and legal fraternity, specially invited guests, members of the media, ladies and gentlemen, it is my pleasure to welcome you to this important stakeholder consultation to discuss an issue that touches the very heart of the Namibian nation - the right to access to housing. Thank you for your commitment at such a late stage in the year. This well attended meeting bears testament to the importance of the issue we are to discuss today.

The need to amend the High Court Act, 1990 and Magistrates' Court Act, 1944 was brought about by the recent court case of *Standard Bank v Magdalena Shipala and 4 Others*,¹ delivered on July 6, 2018. In this matter the Supreme Court held that:

“the issue before the court *a quo* (the High Court), as well as on appeal, was whether the provisions of Rule 108 of the Rules of the High Court apply in an application for an order declaring immovable property belonging to a judgment debtor specially executable”.

The High Court ruled in favour of this submission.²

Following this court case, the Ministry of Justice recognized the need to intervene and to set policy which is aimed at specifically protecting our people who find themselves having to pledge their homes. Sales in execution of a judgment debt must be considered within a context we find sufficiently protective of the right to housing.

The right to adequate housing is a recognized Human Right that falls within the sphere of economic, social and cultural rights. This right is recognized in the Universal Declaration of Human Rights and International Covenant on Economic, Social and Cultural Rights, to which Namibia is a State Party. International Human Rights Law recognizes everyone's right to an adequate standard of living, including adequate housing. It is the duty of the State to protect rights of the citizenry and to prevent and curb unfair treatment of vulnerable groups.

¹ Case No.: SA 69/2015.

² Rule 108 of the High Court provides that the registrar may not issue a writ of execution against immovable property unless a *nulla bona* return has been issued and where a court has on application declared the immovable property specially executable.

Therefore, in light of the Supreme Court judgment, and considering the effect of the judgment when weighed against the right to adequate housing, the Ministry of Justice obtained Cabinet Approval to amend the High Court Act, 1990 and the Magistrates' Court Act, 1944.

Briefly, Rule 108 of the High Court Rules currently states that the registrar may not issue a writ of execution against immovable property unless a *nulla bona* return has been made and where a court has on application declared the immovable property specially executable.

Where the immovable property is the primary home of the judgment debtor, a court may not declare such immovable property executable unless the execution debtor had personally been informed of an application intended to be made to have the immovable property declared executable and the execution debtor had been informed to provide reasons to court why such an order should not be made.

The amendments to the High Court Act, 1990 and Magistrates' Court Act, 1944 now embodies Rule 108 in the primary legislation.

You will notice that provision has not been made for the consequences which will follow where a sale is conducted in contravention of the law. Such consequences could be in the form of criminal or civil sanctions (prosecution or deemed nullification of the sale).

During this discussion we must consider what would be the most effective and deterrent action against illegal sales in execution. We will also consider the effect of the other suggested amendments and how the industry can contribute to educating lenders.

I therefore invite you to engage in fruitful and constructive conversation aimed at enriching the amendment to ensure that the industry is fairly and vocally represented today and that the outcome is not only fair in its protection of the general public but also that it does not neglect the lenders.

Thank you once again for responding to this invitation so late in the year.

End.