



NAMIBIA - February 2018

WINDHOEK HIGH COURT EASES HALT ON LAND TAX 1

Windhoek High Court eases halt on land tax

FARM owners who want to continue paying land tax in Namibia will now be able to do so while a court interdict that prevents the country's tax authorities from assessing land tax liabilities and collecting the tax still remains in force.

This is after the Agricultural Bank of Namibia (Agribank) yesterday obtained an order in the Windhoek High Court to give farm owners the option of continuing to pay land tax in terms of the Agricultural (Commercial) Land Reform Act, while a legal challenge against the land valuations underpinning land tax assessments is pending in the High Court.

The order easing the moratorium placed on the assessment and collection of land tax in February last year was granted by deputy judge president Hosea Angula, after the ministers of land reform, agriculture, and finance, the commissioner of inland revenue, and the registrar of deeds did not oppose an urgent application that the Agribank lodged in the Windhoek High Court last week.

In a case in which two owners of commercial farmland in the Omaruru and Gobabis districts were asking the court to in effect halt the enforcement of land tax obligations until a legal challenge against the valuation of commercial farms in Namibia has been decided, judge Angula ordered on 21 February that the commissioner of inland revenue may not issue any assessment for land tax payable in terms of the farm valuation roll dated 1 April 2012, and may also not require farm owners to pay land tax in terms of any assessment based on that valuation roll.

That order had some unforeseen consequences, though, when it resulted in a halt in the transfer of the ownership of farms sold to new owners, Agribank chief executive officer Sakaria Nghikembua says in an affidavit filed at the court. Nghikembua states that in the commissioner of inland revenue's view the 21 February court order prohibited him from assessing land tax, collecting land tax payments, and then issuing land tax clearance certificates to farm owners. The registrar of deeds in turn refuses to register the transfer of farmland sold to new owners if the seller of the land does not have a land tax clearance certificate, resulting in a situation in which the transfer of the ownership of commercial farms to purchasers has ground to a halt over the past three months.

That state of affairs has a serious negative financial impact on the Agribank, since it has resulted in a situation in which the bank has approved loans to clients wanting to buy farmland, but the loan process has been brought to a halt because the registration of ownership cannot be done without the required land tax clearance certificates, Nghikembua says.

The bank has approved loans totaling N\$85 million, but those loans could not be disbursed because the farmland that the bank's clients are buying cannot be registered in their names, while the tax authorities refuse to issue land tax clearance certificates, Nghikembua also says.

The order granted yesterday states that the interdict given by the deputy judge president on 21 February does not prevent the assessment, collection and payment of land tax in circumstances where any owner of agricultural land applies for a land tax clearance certificate and indicates that they are able and willing to pay the amount in tax assessed, subject to their right to reclaim any amount overpaid.

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The Agribank was represented by senior counsel Raymond Heathcote, assisted by Japie Jacobs, on instructions from Sean McCulloch of the law firm Fisher, Quarmby & Pfeifer. Government lawyer Sylvia Kahengombe represented the five respondents that did not oppose the application.

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