REPORTABLE

CASE NO.: A 136/07

SUMMARY

In the High Court of Namibia

In the matter between:

HENDRIK CHRISTIAN	1ST Applicant
LUCIANA CHRISTIAN	2nd Applicant

and

METROPOLITAN LIFE NAMIBIA RETIREMENT ANNUITY FUND	1st Respondent
METROPOLITAN LIFE NAMIBIA LIMITED	2nd Respondent
NAMIBIA FINANCIAL INSTITUTIONS SUPERVISORY AUTHORITY	3rd Respondent

PARKER, J

2007 June 6

Practice – Urgent applications – The two requirements under rule 6 (12) (b) must be met for application to hear matter on urgent basis can succeed.

Practice – Practice Directives – Legal basis of Practice Directives issued from time to time by the Judge-President explained – Court cannot condone violation of any Practice Directive where no good and acceptable explanation has been given for the infraction.

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NAMIBIA FINANCIAL INSTITUTIONS SUPERVISORY AUTHORITY	3rd Respondent

CORAM: **PARKER, J**

Heard on**:** 2007 June 6

Delivered on**:** 2007 June 6

RULING

PARKER, J:

[1] In this application the 1st and 2nd applicants appear in person; and the 1st applicant swore to and filed the founding affidavit in support of the application. I note that there is

no confirmatory affidavit by the 2nd applicant. I take it that the 2nd applicant is in common cause with the 1st applicant.

[2] At the commencement of the hearing Mr. Geier for the 1st and 2nd respondents raised two points *in limine*. All the two points converge on the point that the application is not properly before this Court in terms of the relevant Practice Directive issued by the Judge-President. For instance, the certificate of urgency filed by the applicants does not comply with Practice Directive 1/2007. Additionally, the application is in breach of the Practice Directive 1/2002 because the application has not been set down in the normal course pertaining to urgent applications. In short according to Mr. Geier, the matter has been enrolled irregularly and therefore it must be struck off the roll with costs.

[3] Mr. Philander for the 3rd respondent took the view that the applicants have not met the requirements of urgency in terms of the Rules of Court and therefore the matter should be heard not on urgent basis but in the ordinary course. So, he argued, the matter should be struck off the roll with costs.

[4] Mr. Christian submitted that as an ordinary citizen bringing the application to this Court, he followed the Rules of Court not the Practice Directives. The reason, according to him, is that it is the Rules that have been gazetted, and therefore known to him. Consequently, according to him, he is only familiar with the Rules.

[5] With respect, Mr. Christian's submission is not well founded. In terms of our law, particularly in terms of the High Court Act, 1990 and the Rules of Court made thereunder, the Judge-President is responsible for ensuring the proper despatch and business of this Court. In that capacity he or she is entitled to issue Directives that conduce to the proper

despatch and conduct of the business of this Court, so long as a Directive he or she issues is not offensive of the High Court Act, 1990, the Rules of Court, and, indeed, any written law. In short, a litigant who acts in contravention of any Practice Directive does so at his or her own peril. Thus, this Court cannot condone something done in violation of a Practice Directive where no good and acceptable explanation has been given for such infraction, as it is the case in the present mattter.

[6] I agree with Mr. Geier that as the applicant's application stand, it is not properly before this Court. It therefore falls to be struck off on this ground alone, namely that it is offensive of the relevant Practice Directives issued by the Judge-President and no good or acceptable explanation has been forthcoming for the breach.

[7] But, for completeness and to deal with Mr. Christian's confident reliance on the Rules of Court, I think I must also deal with Mr. Philander's submission that the applicants have not met the requirements necessary for the hearing of a matter on urgent basis in terms of rule 6 (12) (b) of the Rules of Court.

[8] In terms of rule 6 (12) (b) of the Rules of Court the applicant must in his or her founding affidavit set out explicitly the circumstances on which he or she relies to render the matter urgent and the reasons why he or she claims that he or she cannot be afforded substantial relief at a hearing in due course, i.e. in the ordinary course.[1] Thus, for the applicants to succeed, they must meet these two requirements.

[9] In paragraph 46 of the founding affidavit by the 1st applicant, the first applicant purports to give reasons why in his view the matter is urgent and therefore must be heard

[1] Erasmus. *Superior Court Practice*: p. B1-56A and the cases cited.

on urgent basis. In three of the four sub-paragraphs of paragraph 46, he merely recounts why in his opinion the management of the first respondent is not functioning lawfully and why the first respondent's board of trustees is infested with bad things, including conflict of interest and reasonable suspicion of bias, and why the board is not properly constituted. I must say these cannot constitute circumstances rendering the matter to be heard on urgent basis. This Court is not a regulatory agency for institutions like the 1st respondent.

[10] Then in the remaining sub-paragraph of the said paragraph 46, the applicants aver that they have a statutory right to refer the matter to arbitration "which", according to them, "in itself is sufficient for urgency." This, too, cannot on any interpretation and application of rule 6 (12) (b) of the Rules constitute circumstances rendering the matter urgent. If the applicants have, as they say, a statutory right to refer the matter to arbitration, they do not need this Court's prompting or propulsion to do so.

[11] The result is that the applicants have not, with the greatest respect, given any single reason in the founding affidavit why they claim that they cannot be afforded substantial relief at a hearing in due course.[2]

[12] It follows that the applicants' application that this Court should condone their non-compliance with the Rules of Court and hear the matter on urgent basis cannot succeed. They have not met the two requirements under rule 6 (12 (b) of the Rules. Having so decided, it is not necessary for me to deal with any other point.

[13] For all the above, the applicants' application is refused on the grounds that they have not met the requirements of rule 6 (12) (b) of the Rules of Court and they have also

[2] *Mangala v Mangala* 1967 (2) SA 415; *Salt v Smith* 1991 (2) SA 186 (Nm).

not followed the relevant Practice Directives for the enrolling of urgent applications and have not given any good and acceptable explanation for their failure to follow the relevant Practice Directives.

[14] I agree with Mr. Geier that the striking from the roll of this application does not close the door in the face of the applicants. They can, if so advised, pursue this matter by following the proper procedure.

[15] There remains the matter of costs. I think this is a proper case where costs should follow the event. It is therefore ordered as follows:

(1) The applicants shall jointly and severally pay costs of the 1st, 2nd and 3rd respondents.

(2) The applicants must pay the respondents' costs before they can proceed in the ordinary course in respect of this matter.

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Parker, J

ON BEHALF OF THE APPLICANTS:	Mr. H. Christian (In person)
ON BEHALF OF THE FIST AND SECOND RESPONDENTS:	Adv. H. Geier
Instructed by:	Van der Merwe-Greef Inc.
ON BEHAIFL OF THE THIRD RESPONDENT:	Mr. R. Philander
Instructed by:	LorentzAngula Inc.