



HIGH COURT OF NAMIBIA MAIN DIVISION, WINDHOEK

JUDGMENT

Case no: A 304/2012

In the matter between:

ADRIAAN JACOBUS PIENAAR

APPLICANT

and

THE MIINISTER OF SAFETY & SECURITY

1ST RESPONDENT

NAMBAHU & UANIVI LAYWERS

2ND RESPONDENT

LEITANT-GENERAL SEBASTIAN NDEITUNGA

3RD RESPONDENT

Neutral citation: *Pienaar v Safety & Security* (A 304/2012 [2012] NAHCMD 89
(28 November 2012))

Coram: DAMASEB, JP

Heard: 27 November 2012

Delivered: 27 November 2012

ORDER

I make the following order:

1. The application is removed from the roll and to be enrolled after the steps below mentioned had been taken;

2. The Ombudsman is requested to investigate the circumstances under which Mr Pienaar was not brought to court in the matter of his urgent application enrolled in this court on 27 November 2012 at 14H00 and to submit such report to the court.
3. Once the ombudsman's report is submitted, the registrar of the court is directed to cause a copy of it to be delivered to Mr Pienaar and such person or persons named in the report as being the cause of Mr Piennar not being delivered to court as aforesaid; and to place the matter on the roll before any available judge of the court for the matter to be dealt with according to law.

JUDGMENT

Damaseb, JP:

[1] On 23 November 2012 @ 15:25, Mr Pienaar, a suspect in a string of fraud cases and in police custody pending investigation and eventual criminal charges, brought an 'urgent application' (as he calls) it seeking the following relief:

- '1. That the Honourable Court regard this application as urgent.
2. That the Honourable Court order the Namibian Police to take applicant threw to Swakopmund Court on the morning of 29 November 2012, and not earlier.
3. Alternative to begging two (2) that the Honourable Court order the Namibian Police to put me in a adequate place in Swakopmund police or hospital so that applicant will not suffer of phobic anxiety attacks or torture by the police.
4. That the Honourable Court order the Minister of Safety and Security and a Lieutenant General Sebastian Ndeitunga not to let the four members (investigating officers) transport, or handle applicants transport and safe keeping, until the Ombudsman comply a full report to the Honourable Court about serious misconduct of the four investigating officers of Serious Crime Unit, Keetmanshoop.
5. That the Honourable Court order the Ombudsman to also look into the applicant's complain, that he raises, that he has been threatened to be killed. That the police refuse to take applicant to the doctors; that the police

intevered in the applicant's confidentiality and the police intervene to the doctors when they admitted applicant to hospital, and assault.

6. That the Honourable Court order the Namibian Police to let Windhoek Central Police C.I.D. unit transport applicant in the Interim to court appearances.
7. That the Honourable Court order Mr Christiaan Nambahu of the law company Nambahu & Uanivi to put up a affidavit containing what was said between Mr Nambahu and Deputy Commissioner Rudolp Isaaks on September 2012, and that Mr Christiaan Nambahu hand such affidavit, as well as all the other documents he has of applicant within 48 hours to the applicant.
8. Further and or alternative legal aid.
9. Condonation regarding this handwritten application and rule 6 of the High Court Rules.'

[2] In an accompanying handwritten affidavit to which are annexed opinions by persons who , on the face of it, are experts in psychology or social work, he claims to be suffering from a rare condition of anxiety and claustrophobia which, he claims, requires that he receive special treatment whilst in incarceration or while being transported to and from one destination to the next where he is to appear before magistrates either for bail applications or remand, in connection with the string of fraud allegations against him.

[3] When the matter was called before me at about 14H15, being 15 minutes after the time the matter had been set down for, Mr Pienaar was not present. Counsel for the first and third respondents informed me that he had expected him to be present and that he was surprised at the fact that he was not present. Counsel informed me that he had spoken to a investigating officer stationed at Keetmanshoop and was informed that Mr Pienaar had been brought from Keetmanshoop to Windhoek and that he would be in court. Counsel asked if he could stand the matter down so he could establish where Mr Pienaar was. I declined the invitation because this was the second time involving an application brought by Mr Pienaar before me that he had not been brought to Court by those detaining him. On the previous occasion I asked that the transcript of the record be provided to the Ombudsman for an investigation into the reasons why Mr Pienaar had not been brought to court to have his application adjudicated. I formed the impression then, as I do now, that the

authorities labour under the belief that they have an election whether or not to bring Mr Pienaar to court and that they are not bound by the rules of this court. They are terribly mistaken. They have no choice, whatever their subjective view of the conduct of Mr Pienaar, they have an obligation to bring him to court if he has a pending application or cause, at his instance, before this court, which is the ultimate guarantor of his rights. Any person to whose benefit the Bill of Rights of the Constitution applies has the right of access to court. Law enforcement agencies have no competence to curtail that right except by due process of law.

[4] I removed Mr Pienaar's application from the roll and intimated that I would make an order referring the conduct of the authorities to the Ombudsman for a report to the court on whose conduct resulted in Mr Pienaar not being brought to court so that that person is caused to appear before this court and to explain their conduct and be dealt with according to law.

[5] I therefore make the following order:

1. The application is removed from the roll and to be enrolled after the steps below mentioned had been taken;
2. The Ombudsman is requested to investigate the circumstances under which Mr Pienaar was not brought to court in the matter of his urgent application enrolled in this court on 27 November 2012 at 14H00 and to submit such report to the court.
3. Once the ombudsman's report is submitted, the registrar of the court is directed to cause a copy of it to be delivered to Mr Pienaar and such person or persons named in the report as being the cause of Mr Pienaar not being delivered to court as aforesaid; and to place the matter on the roll before any available judge of the court for the matter to be dealt with according to law.

