



HIGH COURT OF NAMIBIA MAIN DIVISION, WINDHOEK

EX-TEMPORE JUDGMENT

Case no: A 310/2012

In the matter between:

ADRIAAN JACOBUS PIENAAR

APPLICANT

and

THE PROSECUTOR GENERAL

RESPONDENT

Neutral citation: *Pienaar v The Prosecutor General* (A 310/2012) [2012]
NAHCMD 97 (4 December 2012)

Coram: PARKER AJ

Heard: 4 December 2012

Delivered: 4 December 2012

Flynote: Practice – Applications and motions – Urgent application – Requirements for – Requirements are as set out in rule 6(12)(b) of the rules of court.

Summary: Practice – Applications and motions – Urgent application – Requirements for – Requirements are as set out in rule 6(12)(b) of the rules of court – Interpretation and application of the rule in *Salt and Another v Smith* 1990 NR 87 (HC) followed – Court finding that the applicant has not satisfied the two intertwined requirements of (a) setting out explicitly the circumstances rendering the matter

urgent and (b) giving reasons why the applicant says he could not be afforded substantial redress in due course.

ORDER

The application is dismissed with costs.

JUDGMENT

PARKER AJ:

[1] This matter comes to the court by what the applicant characterizes as urgent application. The applicant appears in person; and Mr Small appears for the respondent. The applicant seeks to move the court to order the Prosecutor-General to consolidate all the criminal cases he is facing in various districts of the country and centralize their trial in one court. He says he has written a letter to the Prosecutor-General to that effect but no decision has been made by her; hence the present application.

[2] Urgent applications are governed by rule 6(12) of the rules of court; and rule 6(12)(b) provides that in every affidavit or petition filed in support of any application under para (a) of subrule (12) the applicant must set forth explicitly the circumstances which he or she avers render the matter urgent and the reasons why he or she claims that he or she could not be afforded substantial redress at a hearing in due course. The rule entails two requirements: first, the circumstances relating to urgency which must be explicitly set out, and second, the reasons why an applicant could not be afforded substantial redress in due course.

[3] From the papers it would seem the applicant's application is based on the following; first, that the Prosecutor-General has not taken a decision on his request to centralize all the cases against him, second, that in his view he is not guilty of any of the charges preferred against him, third, that the cases cannot be tried as criminal cases but as civil matters, and fourth, that he has been held in custody for a long period. On the papers I find that the applicant has not satisfied the two requirements. Those contentions are not circumstances explicitly set out which render the matter urgent. He has also not given sufficient reason why he cannot be afforded substantial redress at a hearing in due course. See *Salt and Another v Smith* 1990 NR 87 at 88A-C. On these grounds alone, the application falls to be struck for lack of urgency. But, for completeness, I proceed to deal with the merits of the case.

[4] It is the applicant's contention that in terms of Article 12(1) of the Namibian Constitution the court should make an order which commands the Prosecutor-General to consolidate all the criminal cases against him and centralize the trial of all the cases. The applicant does not tell the court the legal basis of his alleged entitlement to the grant of the order, and it is my firm view that he has no such entitlement. He does not complain that he has not had a fair trial. That being the case, the court is not entitled to make such order directed to the Prosecutor-General.

[5] Accordingly, on these two grounds, ie the issue of urgency and the merits, the application fails to be dismissed. I, therefore, accept Mr Small's submission that the application should be dismissed with costs; that is, costs should follow the event. I have no good reason to depart from this settled rule of practice. Whereupon, I make the following order:

The application is dismissed with costs.

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C Parker
Acting Judge

APPEARANCES

APPLICANT: In Person

RESPONDENT: D Small
Of Office of the Prosecutor General, Windhoek