



HIGH COURT OF NAMIBIA MAIN DIVISION, WINDHOEK

JUDGMENT

Case no: A 239/2013

In the matter between:

ADRIAAN JACOBUS PIENAAR

APPLICANT

and

THE PROSECUTOR-GENERAL

FIRST RESPONDENT

THE MINISTER OF SAFETY & SECURITY

SECOND RESPONDENT

THE MINISTER OF JUSTICE

THIRD RESPONDENT

Neutral citation: *Penaar v The Prosecutor-General* (A 239/2013) [2013]
NAHCMD 233 (02 August 2013)

Coram: HOFF J

Heard: 25 July 2013

Delivered: 02 August 2013

ORDER

- (a) This application is for the aforementioned reasons dismissed.
- (b) No order as to costs is made.

JUDGMENT

HOFF J:

[1] The applicant approached this court in an urgent application claiming as relief that certain criminal cases pending in the Magistrate's Court in Keetmanshoop, Luderitz, Mariental, Walvis Bay and Grootfontein be struck from the respective court rolls, alternatively an order by this court which will uphold Article 12(b) and (d) of the Constitution of Namibia which will guarantee applicant a fair trial.

Lack of urgency

[2] Rule 6(12(b)) provides that an applicant in an urgent application must set forth specifically 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.

[3] It is clear that in a founding affidavit both these two requirements must be satisfied, if not the applicant has failed to make out a case for the order he or she seeks from this court. The applicant has failed in this regard. There is for example nothing in the founding affidavit setting out the reasons why he could not be afforded substantial redress in due course.

Non-joinder

[4] However this is not the only difficulty which the applicant is facing. The applicant has failed to cite the relevant magistrates. Such a non-joinder is a fatal defect and the application must for this additional reason also fail.

[5] After I have heard the submissions in court the applicant tried to rectify his mistake by filing a notice of joinder of parties the next day. This belated filing of notice to join the magistrates referred to however, cannot for obvious reasons assist the applicant – a respondent must be joined prior to the hearing of an application and must be notified of such a joinder in order for such a respondent to be put in a position to decide the appropriate response to the application.

[6] This application is for the aforementioned reasons dismissed. No order as to costs is made.

E P B HOFF
Judge

APPEARANCES

APPLICANT :

In Person

FIRST DRESPONDENT:

D Small
Of the Office of the Prosecutor-
General, Windhoek

SECOND & THIRD RESPONDENTS:

Mr Ndlovu
Of the Government Attorney,
Windhoek