REPUBLIC OF NAMIBIA REPORTABLE

HIGH COURT OF NAMIBIA MAIN DIVISION, WINDHOEK

JUDGMENT (EX-TEMPORAE)

Case no: A 380/2013

In the matter between:

THOMAS K HEITA	**APPLICANT**
and	
THE MINISTER OF SAFETY AND SECURITY	**FIRST RESPONDENT**
THE COMMISSIONER OF CORRECTIONAL SERVICES	**SECOND RESPONDENT**
THE OFFICER-IN-CHARGE OF WINDHOEK CENTRAL PRISON	**THIRD RESPONDENT**
THE DEPUTY OFFICER-IN-CHARGE OF OPERATIONS FOR WINDHOEK PRISON	**FOURTH RESPONDENT**
THE UNIT MANAGER OF UNIT 3 AT WINDHOEK CENTRAL PRISON	**FIFTH RESPONDENT**

Neutral citation: *Heita v The Minister of Safety and Security* (A 380/2013) [2013] NAHCMD 330 (8 November 2013)

Coram: PARKER AJ

Heard: **8 November 2013**

Delivered: **8 November 2013**

Flynote: Applications and motions – Urgent applications – Requirements for – Requirements of rule 6(12)*(b)* are circumstances relating to urgency which must be explicitly set out and the reasons why an applicant could not be afforded substantial redress in due course must also be explicitly set out in founding affidavit – The court

held that the nature of the orders sought is vague and they are impermissible to grant.

Summary: Applications and motions – Urgent applications – Requirements of rule 6(12)*(b)* are circumstances relating to urgency which must be explicitly set out and the reasons why an applicant could not be afforded substantial redress in due course must also be explicitly set out in founding affidavit – In instant case the court found that the applicant has not satisfied at all the two requirements of rule 6(12)*(b)* of the rules of court – Court found further that the facts relied on in the founding affidavit cannot support the three disparate orders sought by the applicant – Court concluded that the nature of the orders sought, namely, 'interim injunction order', 'declaratory order' and 'mandatory injunction order' in the same breath is vague and the orders are impermissible to grant – Consequently the court dismissed the application with costs.

Flynote: Pleadings – Lay person representing himself or herself – Court held that the fact that the court ought to construe generously and in the light most favourable to the lay person representing himself or herself should not be taken too far to render the rules of court otiose because that would not conduce to due administration of justice – Court held that a respondent must always be sufficiently informed on the papers as to what case the respondent is to meet to enable the respondent to answer adequately.

Summary: Pleadings – Lay person representing himself – Court held that the court ought to construe generously and in the light most favourable to the lay person representing himself or herself should not be taken too far to render the rules of court otiose because that would not conduce to due administration of justice – A respondent should always be sufficiently informed on the papers as to what case the respondent is to meet to enable the respondent to answer adequately – In the instant case court found that on the papers the nature of the orders sought is vague and it was impermissible to grant the orders sought – It is clear whether the applicant seeks interim or final relief – The three orders sought are so disparate and yet the applicant relies on the same facts for all the orders – In any case, the court found

that the facts relied on cannot support the grant any of the orders sought – Consequently, the court dismissed the application with costs.

ORDER

The applicant's application is dismissed with costs

JUDGMENT

PARKER AJ:

[1] In this matter the applicant, who represents himself, has launched an application by notice of motion and he prays for the following relief: (a) condoning the urgency of application herein, and (b) interim injunction order. It also contains an application for judicial review. The respondents have moved to reject the application and they oppose the application in terms of rule 6(5)*(d)(iii)* of the rules of court, that is, they raise questions of law only. The questions are the applicant's non-compliance with rule 6(12)*(b)* of the rules of court which provides for the peremptory requirements an applicant who prays that his or her application be heard on urgent basis must satisfy in order to succeed and the vagueness of the relief sought and the impermissibility of the granting of the orders prayed for.

[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 which must also be explicitly set out in the founding affidavit.

[3] Apart from a process entitled, ‘certificate of urgency’ I find that there is nothing on the papers tending to establish satisfaction of the two requirements in rule 6(12) *(b)* of the rules. I, therefore, conclude that the applicant has not satisfied the first requirement under rule 6(12)*(b)* of the rules which is that the applicant must set out explicitly the circumstances relating to urgency. He has also not satisfied the second requirement under rule 6(12)*(b)* which is that the applicant must set out explicitly the reasons why the applicant claims that he could not be afforded substantial redress in due course.

[4] Pleadings prepared by lay persons representing themselves should, as Mr Ntinda, counsel for the respondents, submitted, be construed generously and in the light most favourable to the litigant. (*Christian v Metropolitan Life Namibia Retirement Annuity Fund and Others* 2008 (12) NR 753 (SC)) But, in my opinion, the proposition should not be taken too far to cover situations where a rule of court has not been complied with at all, as is in the present case. In the present case, the applicant has made no attempt – none at all – to satisfy the peremptory requirements of rule 6(12)*(b)* of the rules of court. For these reasons alone the applicant’s application should fail.

[5] Besides, on the papers it is impossible to decide what relief the applicant seeks from the court. The nature of the orders sought by the applicant, namely, ‘interim injunction order’, ‘declaratory order’ and ‘mandatory injunction order’ in the same breath, is vague and the orders are impermissible to grant, as Mr Ntinda submitted. Again, the fact that pleadings prepared by lay persons who represent themselves should be construed generously and in the light most favourable to them ought not to be taken too far; and each case must be considered on its own facts and in its own circumstances.

[6] In the instant case, the orders sought by the applicant are disparate and yet the applicant relies on the same facts to support all those disparate orders; and what

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is more, it is not clear on the papers whether the applicant seeks an interim or final order. I do not think it is the burden of the court to hunt in the nook and cranny of a lay applicant's pleadings in order to find what the court thinks the lay applicant means and then proceed to adjudicate the case on that basis. That would be unfair for the respondent who must always be sufficiently informed on the papers as to what case he or she is to meet in order to enable the respondent to answer adequately. In any case, I find that the facts relied on in the so-called founding affidavit cannot support the grant of any of the three orders sought.

[7] I hold that the fact that the court ought to construe pleadings prepared by a lay person represented himself or herself generously and in the light most favourable to the lay person representing himself or herself should not be taken too far to render the rules of court otiose because that would not conduce to due administration of justice.

[8] For all the aforegoing reasoning and conclusions, the applicant's application is dismissed with costs.

C Parker

Acting Judge

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APPEARANCES

APPLICANT: In Person

RESPONDENTS: S Ntinda

Of Government Attorney, Windhoek