



HIGH COURT OF NAMIBIA MAIN DIVISION, WINDHOEK

JUDGMENT

Case no: A 33/2013

In the matter between:

ADV. LUCIA PANDULENI HAMUTENYA

APPLICANT

and

ISACK GAMEB

FIRST RESPONDENT

ALFEUS AUCHAB

SECOND RESPONDENT

SIMEON PAULUS

THIRD RESPONDENT

PAUL GAMEB

FOURTH RESPONDENT

Neutral citation: *Hamutenya v Gameb* (A 33/2013) [2013] NAHCMD 45 (20 February 2013)

Coram: PARKER AJ

Heard: 20 February 2013

Delivered: 20 February 2013

Flynote: Applications and motions – Urgent application – Requirements for – *Salt and Another v Smith* 1990 NR 87 relied on.

Summary: Applications and motions – Urgent application – Requirements for – Interpretation and application of rule 6(12)(b) in *Salt and Another v Smith* 1990 NR 87 relied on – *In casu* applicant did not appear in person or by counsel when applicant set the matter down for hearing of application on 15 February 2013 resulting in application being removed from the Roll – On restoring application on the roll some three court days later applicant did not explain why she failed to appear for

the hearing on 15 February 2013 – Relying on *Hewat Beukes t/a MC Bouers & Others v Luderitz Town Council and Others* Case No. A 388/2009 (Unreported) Court finding that this is not a deserving case where the court should grant indulgence to the applicant and hear the matter on urgent basis – Additionally, court finding that applicant has not satisfied the requirements in rule 6(12)(b) of the rules of court – Court finding further that urgency is self-created – Court accordingly dismissing application for lack of urgency.

ORDER

The application is dismissed for lack of urgency.

JUDGMENT

PARKER AJ:

[1] The applicant launched this application on notice of motion and prayed that it be heard on urgent basis. The application was set down by the applicant for hearing at 09h00 on 15 February 2013. There by no appearance for the applicant and the respondents in person or by counsel I removed the matter from the roll. Barely three days later the applicant now restores the application on the Roll and still prays it to be heard on urgent basis.

[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] The rule on urgent applications plays a useful role in the administration of justice, and it must not be prostituted or stultified to such an extent that it loses its usefulness and efficacy.

[4] At the hearing today (20 February 2013), there is no appearance for the respondents in person or by counsel, bar the second respondent against whom the application has been withdrawn. And the applicant, who appears in person, does not give one iota of explanation why after setting the matter down on short notice and praying that it be heard on urgent basis she did not appear on 15 February 2013 for the hearing of her application. The conduct of the applicant on its own is sufficient for the court to refuse to grant the indulgence that the applicant seeks. As I said in *Hewat Beukes t/a M C Bouers & Others v Luderitz Town Council and Others* Case No. A 388/2009 (Unreported) (para 5), in deciding whether the requirements in rule 6(12)(b) have been met, that is, whether it is a deserving case, it is extremely important for the Judge to bear in mind that the indulgence – and indulgence, it is – that the applicant is asking the Court to grant, if the Court grants it, would whittle away the respondent's right to fair trial guaranteed to him or her by the Namibian Constitution, and so it is only in deserving cases that the court should grant such indulgence.

[5] Besides, the applicant has not satisfied the two requirements in rule 6(12)(b). She has not set out explicitly on the papers the circumstances which render the matter urgent. She has also not given reasons why she could not be afforded substantial redress in due course. See *Salt and Another v Smith* 1990 NR 87 at 88A-C. The urgency is self-created, I should add.

[6] For all the foregoing and in the exercise of my discretion I conclude that this is not a deserving case where this court should hear the matter on urgent basis.

[7] Whereupon, the application is dismissed for lack of urgency.

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C Parker
Acting Judge

APPEARANCES

APPLICANT : In person

RESPONDENTS: No appearance