



## HIGH COURT OF NAMIBIA MAIN DIVISION, WINDHOEK

Case no: A 72/2013

In the matter between:

**ADRIAAN JACOBUS PIENAAR****APPLICANT**

and

**THE PROSECUTOR-GENERAL****FIRST RESPONDENT****THE MAGISTRATE COURT MARIENTAL****SECOND RESPONDENT****THE MAGISTRATE KEETMANSHOOP****THIRD RESPONDENT****THE MAGISTRATE LUDERITZ****FOURTH RESPONDENT**

**Neutral citation:** *Pienaar v The Prosecutor-General* (A 72/2013) [2013] NAHCMD 85 (2 April 2013)

**Coram:** PARKER AJ

**Heard:** 28 March 2013

**Delivered:** 2 April 2013

**Flynote:** Practice – Applications and motions – Urgent application – Requirements for in terms of rule 6(12)(b) of the rules.

**Summary:** Practice – Applications and motions – Urgent application – Requirements for – The circumstances relating to urgency and the reasons why an applicant could not be afforded substantial redress in due course must be explicitly set out in compliance with rule 6(12)(b) of the rules of court – In instant case, applicant has not met the two requirements – Consequently, the court refused the application on the grounds that the applicant has failed to satisfy the two requirements.

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**ORDER**

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The applicant's application is refused with costs on the ground that the requirements of rule 6(12)(b) have not been satisfied.

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**JUDGMENT**

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PARKER AJ:

[1] In this matter the applicant brings an application on notice of motion; and in the papers the applicant seeks the following relief on a urgent basis:

'Prayers

- (a) That the Honourable Court regard this application as urgent.
- (b) That the Honourable Court order the Respondents to temporary withdraw case 80/81/8/2012 of Keetmanshoop; case CR 12/10/2012 of Mariental and Case CR 36/9/2012 of Luderitz.
- (c) Further and or alternative legal Aid.
- (d) Condonation regarding this handwritten application.'

I understand the applicant to say that he prays that the application to be heard on urgent basis.

[2] The respondents have moved to reject the application; and Mr Ndlovu appears for the respondents. As the application was issued from the office of the registrar at 15h40 yesterday (ie 27 March 2013) counsel was allowed to make

submission in opposition to the application, because the respondents did file Notice of Intention to Oppose the same day (ie 27 March 2013).

[3] 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.

[4] On the papers the applicant claims that the court should hear the matter on urgent basis as the case involves loss of his personal liberty because he is being detained in custody unlawfully. Mr Ndlovu's submitted contrariwise that it cannot be true that the applicant is being detained unlawfully on the basis that, counsel argued, if the applicant was being detained unlawfully it would make no sense for the applicant himself to pray in para 2 of the notice of motion that the court should order the temporarily withdrawal of Case 80/81/8/2012 of Keetmanshoop, Case CR 12/10/2012 of Mariental and Case CR 36/9/2012 of Luderitz. I accept Mr Ndlovu's submission. I find that on the papers the applicant concedes that he is being detained awaiting trial at the magistrates' courts of those districts he himself mentions in prayer 2 of the notice of motion. In any case, I hold that the court is not competent to make the order prayed for by the applicant in para 2 of the notice of motion as such an order would be offensive of the Namibian Constitution which vests the power to prosecute in criminal proceedings in the Prosecutor General only.

[5] The finding and the holding in para 5 show that the applicant has not satisfied the first requirement under rule 6(12)(b) of the rules of court which is that the applicant must set out explicitly the circumstances relating to urgency.

[6] The applicant 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. In any case, he himself concedes that application to be admitted to bail is available to him.

[7] For all the foregoing, I conclude that the applicant's application should fail. In the result, the applicant's application is refused with costs on the ground that the requirements of rule 6(12)(b) have not been satisfied.

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C Parker  
Acting Judge

APPEARANCES

APPLICANT: In Person

RESPONDENTS: M Ndlovu  
Of Government Attorney, Windhoek