REPUBLIC OF NAMIBIA REPORTABLE

HIGH COURT OF NAMIBIA MAIN DIVISION, WINDHOEK

JUDGMENT

Case no: A 295/2014

In the matter between:

PURITY MANGANESE (PTY) LTD **APPLICANT**

And

MARITIMA CONSULTING SERVICES CC **FIRST RESPONDENT**

NORTHGATE DISTRIBUTION SERVICE LTD **SECOND RESPONDENT**

Neutral citation: *Purity Manganese (Pty) Ltd v Maritima Consulting Services CC* (A 295/2014) [2014] NAHCMD 350 (20 November 2014)

Coram: PARKER AJ
Heard: **30 October 2014**
Delivered: **20 November 2014**

Flynote: Practice – Applications and motions – Urgent applications – Court held that applicant must satisfy the two requirements under rule 73(4) of the rules (ie rule 6(12)*(1)(b)* of the repealed rules) – Court found that the applicant has failed to satisfy the requirements, in particular the requirement in rule 73(4)*(b)* of the rules – Consequently, the court refused the application on that basis.

Summary: Practice – Applications and motions – Urgent applications – Court held that applicant must satisfy the two requirements under rule 73(4) of the rules (ie rule 6(12)*(1)(b)* of the repealed rules) – The applicant launched an urgent application for an order to intervene in, and oppose, a pending application in which a rule nisi had

been granted – Applicant sought to intervene in, and oppose, that application – On the papers the court found that applicant has not satisfied the requirements under rule 73(4), in particular the requirement under para (b) of rule 73(4) – Consequently, the court refused, with costs, the application on the basis that the requirements of rule 73(4) of the rules of court have not been satisfied.

ORDER

The application is refused, with costs, on the grounds that the requirements of rule 73(4) of the rules of court have not been satisfied, including costs of one instructing counsel and one instructed counsel.

JUDGMENT

PARKER AJ:

[1] The applicant has brought an application on notice of motion (case no. A 295/2014) for the relief set out in the notice of motion, and prays the court to hear the matter as an urgent application. It is primarily for leave not only to intervene in, but also to oppose, the application under case no. A 282/2014 which is ongoing and pending. The parties in case no. A 282/2014 are Maritima Consulting Services CC as the applicant ('Maritima') and Northgate Distribution Services Ltd as the respondent (Northgate). It, therefore, makes no sense – none at all – for the applicant's legal practitioners to have insisted that the registry open a new file with a new case number for the application. If there is no pending application (case no. A 282/2014), as a matter of rudimentary logic, there would be no application to intervene in and oppose. The application for leave to intervene and to oppose cannot exist on its own, with its own case number.

[2] I have made these observations for a purpose. It is to underline the point that a multiplicity of files with different case numbers in respect of an ongoing, pending case serves no purpose – none at all – except to obfuscate proceedings in the court, and so, therefore, the practice should not be encouraged.

[3] The application which the applicant applies for leave to intervene in and to oppose (case no. A 282/2014) was heard *ex parte* and on urgent basis within the meaning of rules 72 and 73 of the rules of court. Having been satisfied that a case had been made out for the relief sought the court ordered a rule nisi to issue, with the return date of 21 November 2014, and it was further ordered that the return date may be anticipated by the respondent Northgate on not less than 24 hours' notice to the applicant Maritima, as contemplated in rule 72(7) of the rules of court. Maritima had applied to the court to attach 174 containers of manganese which, as far as Maritima was concerned, were the property of Northgate and which Northgate kept at the Port of Walvis Bay *ad fundandam jurisdictionem*, alternatively *ad confirmandam jurisdictionem* over Northgate, a peregrinus of the court.

[4] In this present application to intervene the applicant is Purity Manganese (Pty) Ltd ('Purity Manganese') and the first respondent is Maritima and the second respondent Northgate. In its papers, Purity Manganese says that the purpose of the application is to seek leave to intervene in, and to oppose, the application under case no. A 282/2014, 'on the strength that the applicant herein (Purity Manganese) has a real and substantial and ultimately a protectable interest which has been affected by a rule nisi issued on Wednesday 22 October 2014, by this Court, and pursuant to that application'. And what is the 'real and substantial and ultimately a protectable interest'? It is based on this, so says Purity Manganese: Northgate is not the owner of the containers and their contents (manganese ore): they are owned by Purity Manganese.

[5] The first respondent Maritima has moved to reject the application to intervene and to oppose. Accordingly, Maritima has filed opposing papers in which Maritima has raised a preliminary objection to the effect that the applicant has failed to make out a case for urgency. It is to a consideration of whether the court should grant the

relief sought in para 1 of the Notice of Motion, that is, that the matter be heard as an urgent application, that I now direct the enquiry. Thus, at the threshold, I should determine whether prayer 1 should be granted.

[6] Urgent applications are now governed by rule 73 of the rules of court (ie rule 6(12) of the repealed rules of court), and subrule (4) provides that in every affidavit filed in support of an application under subrule (1) 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 he or she could not be afforded substantial redress at a hearing in due course. Indeed, subrule (4) rehearses para (b) of rule 6(12) of the repealed rules. Thus, the rule entails two requirements: first, the circumstances relating to urgency which must be explicitly set out, and second, the reasons why an applicant claims he or she could not be afforded substantial redress in due course. It is well settled that for an applicant to succeed in persuading the court to grant the indulgence sought that the matter be heard on urgent basis the applicant must satisfy both requirements.

[7] In the instant case, I find from the applicant Purity Manganese's papers that the applicant has not satisfied all the two requirements. While it has set out the circumstances that render the matter urgent, it has not, as Ms Van der Westhuizen, counsel for the respondent Maritima, submitted, given reasons – not one grain of reason – why it could not be afforded substantial redress in due course. See *Salt and Another v Smith* 1990 NR 87. And I did not hear Mr Oosthuizen (with him Mr Jones), counsel for the applicant Purity Manganese, to contradict the fact that the applicant has not satisfied the second requirement under subrule (4)*(b)* of rule 73 of the rules of court. In sum, the applicant has failed to comply with the requirements of rule 73(4) of the rules, in particular the second requirement under para (b) of rule 73(4). I should, consequently, refuse grant the indulgence the applicant seeks.

[8] In the result, the application is refused with costs on the grounds that the requirements of rule 73(4) have not been satisfied, including costs of one instructing counsel and one instructed counsel.

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C Parker

Acting Judge

APPEARANCES

APPLICANT :	G H Oosthuizen (assisted by J P R Jones) Instructed by Hohne & Co., Windhoek
FIRST RESPONDENT:	C E van der Westhuizen Instructed by Engling, Stritter & Partners, Windhoek