REPUBLIC OF NAMIBIA REPORTABLE

HIGH COURT OF NAMIBIA MAIN DIVISION, WINDHOEK

JUDGMENT

Case no: A 175/2015

In the matter between:

AUGUST MALETZKY **APPLICANT**

And

INSPECTOR-GENERAL OF NAMIBIAN POLICE **FIRST RESPONDENT**
INSPECTOR MORGAN
(MOTOR VEHICLE THEFT UNIT) **SECOND RESPONDENT**
KARL H DENTLINGER **THIRD RESPONDENT**
RENE CARLO DENTLINGER **FOURTH RESPONDENT**

Neutral citation: *Maletzky v Inspector-General of Namibian Police* (A 175-2015) [2015] NAHCMD 162 (15 July 2015)

Coram: PARKER AJ
Heard: **15 July 2015**
Delivered: **15 July 2015**

Flynote: Practice – Applications and motions – Urgent applications – Applicant must satisfy the requirements of rule 73(4) of the rules of court for the matter to be heard on urgent basis – Furthermore, no urgency where urgency is self-created.

Summary: Practice – Applications and motions – Urgent applications – Applicant must satisfy the requirements of rule 73(4) of the rules of court for the application to

be herd as one of urgency – Court finding that applicant has failed to satisfy those requirements – Consequently, application struck from the roll with costs.

ORDER

The application is struck from the roll with costs.

JUDGMENT

PARKER AJ:

[1] The applicant, who represents himself, seeks the relief set out in the notice of motion; and the applicant prays the court to hear the matter on the basis of urgency. The respondents, represented by Mr Khupe, have moved to reject the application, and they say the matter should not be heard on the basis of urgency. The applicant and Mr Khupe were then instructed by the court to deal with the question of urgency only.

[2] As respects the question of urgency, I had the following to say in the recent case of *Fuller v Shigwele* (A 336/2014) [2015] NAHCMD 15 (5 February 2015), para 2:

> 'Urgent applications are now governed by rule 73 of the rules of court (ie rule 6(12) of the repealed rules of court), and subrule (4) provides that in every affidavit filed in support of an application under subrule (1) the applicant must set forth explicitly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 Indeed, subrule (4) rehearses para (b) of rule 6(12) of the repealed rules. 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 the basis of urgency, the applicant must satisfy both requirements. And *Bergmann v Commercial Bank of Namibia Ltd and Another* 2001 NR 48 tells us that where urgency in an application is self-created by the applicant, the court should decline to condone the applicant's non-compliance with the rules or hear the application on the basis of urgency.'

That is the manner in which I approach the determination of the issue of urgency in the instant application.

[3] I have carefully considered the papers filed of record and submission by the applicant. I invited the applicant to point to me in the papers why the matter should be heard on urgent basis. Applicant pointed paras 5.9, 5.10, 5.15 and 5.16 to me. He also submitted that he is in possession of the motor vehicle in question lawfully and if the Police took possession of it, he stands to lose. He submitted further that in such event the court should act to protect his rights.

[4] I do not find that on the papers the applicant has set out explicitly in his affidavit the circumstances which render the matter urgent. The applicant has also not given reasons – none at all- why he could not be afforded substantial redress in due course. See *Salt and Another v Smith* 1990 NR 87 at 88A-C.

[5] In this regard, it is worth noting that it has not been shown, for instance, that the court is dealing with respondents who are likely to escape the jurisdiction of the court and put the motor vehicle out of the reach of the jurisdiction of the court or expropriate it without the applicant being able to be afforded substantial redress in due course. See *Salt and Another v Smith* loc. cit. On this score, I accept Mr Khupe's submission on the point.

[6] For the sake of completeness, I should consider the applicant's submission in support of which he referred the court to Case No. A 165/2015, which, as I see it, is in response to Mr Khupe's submission that the respondents have been dragged to

court on very short notice. Whether or not the respondents have been dragged to court on superlatively short notice is not an issue in the present proceedings which are solely on the question of urgency.

[7] I shall reiterate the point that the practice of urgent application serves a very useful purpose in the administration of justice. The court has, therefore, the duty to ensure that the practice is not prostituted to such an extent that it loses its purpose and usefulness in the due administration of justice. In the instant case, the applicant is not being denied his right to approach the seat of judgment and have his rights protected. But the rules of court expect litigants to satisfy requirements prescribed by them. In this proceeding, the applicant has not satisfied the clear requirements of rule 73(4), and so he cannot be given the indulgence he craves. Consequently, I decline to condone his non-compliance with the rules of court and hear this application as one of urgency.

[8] Whereupon; the application is struck from the roll with costs.

C Parker

Acting Judge

APPEARANCES

APPLICANT :	A Maletzky In person
FIRST AND SECOND RESPONDENTS:	M Khupe Of Government Attorney, Windhoek
THIRD AND FOURTH RESPONDENTS:	No appearance