



HIGH COURT OF NAMIBIA MAIN DIVISION, WINDHOEK

JUDGMENT

In the matter between:

Case no: I 2848/2013

ADRIAAN PIENAAR

PLAINTIFF

And

RACHEL AMANDA TSOEU

DEFENDANT

Neutral citation: *Adriaan Pienaar v Rachel Amanda Tsoeu* (I 2848/2013] [2016]
NAHCMD 39 (12 February 2016)

Coram: MILLER AJ

Heard: 12 February 2016

Delivered: 12 February 2016 (*Ex tempore*)

Flynotes: Urgent application – Applicant to bring the matter as soon as he becomes aware of the issue to be determined – should not unduly- delay in bringing the application - Application brought two and a half years after main action instituted – No explanation tendered – Application dismissed.

ORDER

In the premises I make the following order:

1. The application is struck from the roll.
 2. Cost to be limited to disbursements incurred by the respondent if any.
-

JUDGMENT

MILLER AJ:

[1] Pending before me is an action instituted by the plaintiff against the defendant in which Summons was issued during August 2013.

[2] At issue between parties is a certain motor vehicle which the plaintiff alleges he had sold to the defendant and in respect of which the defendant has failed to pay the monthly instalments to the plaintiff on due date. At that stage, the applicant in this matter, who is the plaintiff in the main action, was represented by a firm of legal practitioners. The matter has gone through the process of case management which was in itself a complicated process since neither of the parties (presently) enjoy legal representation. The trial was supposed to commence towards the end of January, but had to be postponed to the 24th of June mainly because, neither of the parties had complied with the rules of this Honourable Court regarding witness statements, discovery and so forth.

[3] On the day that the matter was postponed, that is the 25th of January 2016, the Applicant filed an Urgent Application for certain interim relief and enrolled the matter only four days later. The matter is presently opposed by the Respondent who is the defendant in the main action.

[4] The Rules of Court regarding applications are clear. They set time limits within which the necessary papers in order to prepare the Application for hearing have to be filed. It is so that in certain circumstances the Court will condone the non-compliance with the rules if it is satisfied that there is urgency in the matter.

[5] The two fundamental principles are that the applicant is obliged to file the paper, bring the Application as soon as he becomes aware of the issue he wants determined. Put conversely he should not unduely delay in bringing the application and secondly, he should establish that he has some prospects of success and will be prejudiced if the urgent relief is not granted.

[6] There is on the papers before me no explanation why this application is filed as one of urgency almost two and half years after the action is instituted. On that basis alone, the matter cannot succeed.

[7] Order

1. The application is struck from the roll.
2. Cost to be limited to disbursements incurred by the respondent if any.

Miller, AJ
Acting

Appearance:

Plaintiff

Mr A Pienaar

In Person

Defendant

Ms A Tsoeu

In Person

Appearance:

Plaintiff	Y Campbell
Instructed by	MB De Klerk & Associates, Windhoek
Defendant	KN Amoomo
Of	Sisa Namandje & Co, Windhoek