"ANNEXURE 11"
Practice Directive 61

IN THE HIGH COURT OF NAMIBIA

Case Title: WORKERS REVOLUTIONARY PARTY VS BENSON KAAPALA KAAPALA	**Case No:** HC-MD-CIV-MOT-GEN-2018/00458
	Division of Court: HIGH COURT (MAIN DIVISION)
Heard before: HONOURABLE LADY JUSTICE CLAASEN, ACTING JUDGE	**Date of hearing:** 20 DECEMBER 2018
	Delivered on: 21 DECEMBER 2018
Neutral citation: *Workers Revolutionary Party vs Kaapala* (HC-MD-CIV-MOT-GEN-2018/00458) [2019] NAHCMD 412 (21 DECEMBER 2018)	
Result on merits: Merits not considered.	
The order: Having heard **Mr Christians**, in person for the Applicant and **Mr Fleermys**, the second respondent, in person and having read the documents filed of record: **IT IS ORDERED THAT:** 1. The application is refused due to lack of urgency. 2. No order of cost is made. 3. The matter is removed from the roll.	
Reasons for orders:	
Introduction [1] The application came before me on 20 December 2018, on an urgent basis. I heard submissions on the points of service and urgency and remanded it to the next day for a ruling. On 21 December 2018 I ruled that the applicant had not satisfied the requirements of urgency prescribed by Rule 73(4) and refused the	

application on that basis. The applicant has since requested reasons for the decision. Brief reasons were given in court on 21 December 2018 and this PD61 constitutes the written reasons.

[2] The applicant claimed final relief on an urgent basis in the following terms:

a) interdicting second and third respondents to hand over the keys of the applicant's office situated at Okahandja New Mall inclusive office furniture therein;

b) interdicting second and third respondents to hand over to the applicant the motor vehicles with registration numbers N67953W and N172-102W;

c) interdicting first, second and third respondents to restore possession of the bank account number 61165563 at the First National Bank to the applicant;

d) interdicting first second and third respondents to restore the possession of all properties (movable and immovable) in the custody to the applicant.

The respondents were given one day to file answering papers and none had been filed.

[3] Mr. Christian in person argued the application on behalf of the Applicant. There was no appearance at the hearing for the 1st and 3rd respondent. The 2nd respondent appeared in person.

Service

[4] When it comes to service of new applications or actions, Rule 8(1) of the Rules of the High Court is applicable. The applicant did not state what prevented it from effecting service as stipulated by Rule 8(1) through the Deputy Sheriff. Neither did the applicant's papers request to serve through substituted methods as provided for in the Rules of Court.

[5] The applicant filed a document of what purported to be an affidavit entitled 'Rule 9(1)(c) Proof of Service'. The date of the commissioning of the document was omitted. The document refers to another case between the parties wherein the 1st respondent was represented by Mukonda Law Chambers and the 2nd and 3rd respondents were represented by Tjituri Law Chambers. It conveyed that service was done through e-justice on the aforementioned firms for the 1st and 2nd respondent respectively and that the 3rd respondent was served through a certain e-mail address. In addition, notice of the application was given via sms message and whatsapp.

[6] The applicant cannot rely on service in terms of Rule 8(6) given that the applicant opted to register a new case. Service via e-justice contemplates that a legal practitioner should already be on record in the specific case in question. *In casu*, there was no legal practitioners that indicated they accepted instructions.

[7] Therefore the service effected by the applicant was not valid. The need and importance of proper notice is compounded when it comes to urgent applications, especially in one like this where final interdicts were sought and the respondents were afforded a mere day to reply.

URGENCY

[8] The second respondent averred that the matter was not urgent as the cause emanated from their political party's differences in 2015.

[9] In support of urgency, the applicant stressed provisions of the Electoral Act 5 of 2014, in particular s. 139 that requires a political party to submit annual returns of assets and liabilities, and the risk of de-registration if they don't comply.

[11] Another point that was advanced by the applicant was that it only learnt on 6 December 2018 that the Parliament had paid over money to the applicant's bank account, which funds are depleted at a rapid pace. The contention does not hold water that a member in the leadership cadre of the applicant could not be privy to public funds availed to the various political parties.

[12] In urgent applications time-periods are of relevance. It was with this in mind that the court posed the question by which date was the applicant illicitly dispossessed of the property or the rights in the property forming the subject matter of the application. The applicant was unable to provide a date. The applicant reasoned that they are not dispossessed but it was rather a case of them being deprived from controlling their affairs.

[13] In canvassing the support documents that the applicant annexed to the application, it confirms the perception that the dispute was ongoing during the year 2015. The annexures were respectively marked as 'EXP1', which is a letter from the Office of the Speaker dated 21 May 2015 to the applicant's leaders, 'EXP2' a report compiled by the Ombudsman dated July 2015 and 'EXP3', which is notice from the Electoral Commission dated 10 September 2015.

[13] The court also posed a question as to whether the applicant has submitted the annual declarations of assets and liabilities during the previous years. The response from the applicant was that it could not do so as there was no assets or liabilities. Not having any asset does not prevent one from the act of submitting the required forms with the figure of nil in the appropriate places, if that was the case. The answer from the applicant in effect means that it did not comply with the statutory requirement in previous years, yet it now wants to elevate that as a reason for urgency at the end of 2018. I take the view that it was self created urgency, because the issues stem from 2015 and the applicant could have tendered the returns with the information that was relevant at the time.

[14] Furthermore, the applicant is now aware of the assets and bank account. That is apparent from averments in their founding affidavit. It is not clear what prevents the applicant from using the information to tender the returns to the authorities.

[15] Based on these reasons I found that the urgency was self-created. I concluded that the applicant has not satisfied the requirements of urgency prescribed by Rule 73(4) of the Rules of Court. In the result, the application was refused due to lack of urgency. It remains the prerogative of the applicant to approach the court in the ordinary course, should it be so inclined. There was no order as to cost.

Judge's signature:	**Note to the parties:**
	Not applicable.
Counsel:	
Applicant	**Second Respondent**
H Christian *of* Workers Revolutionary Parties, Windhoek	Mr Fleermys - In Person *The Second Defendant*