



**HIGH COURT OF NAMIBIA MAIN DIVISION, WINDHOEK**

**RULING**

Case no: HC-MD-CIV-MOT-GEN-2020/00392

In the matter between:

**IMMOLATRIX LINDA GEINGOS-ONEUGBU**

**APPLICANT**

and

**MINISTER OF HIGHER EDUCATION TRAINING  
AND INNOVATION**

**1<sup>st</sup> RESPONDENT**

**PUBLIC SERVICE COMMISSION**

**2<sup>nd</sup> RESPONDENT**

**THE PRIME MINISTER**

**3<sup>rd</sup> RESPONDENT**

**MINISTER OF INTERNATIONAL RELATIONS  
AND COOPERATION**

**4<sup>th</sup> RESPONDENT**

**Neutral citation:** *Geingos-Oneugbu v Minister of Higher Education and Innovation* (HC-MD-CIV-MOT-GEN-2020/00392) NAHCMD 490 (27 October 2020)

**Coram:** Schimming-Chase, AJ

**Heard:** 27 October 2020

**Delivered:** 27 October 2020

**Flynote:** Practice - Applications and motions - Urgent applications - No urgency where urgency is self-created - Fact that parties were negotiating not an excuse for bringing application at the last minute

**Summary:** The applicant launched an urgent application for an order directing the respondents to pay full tuition fees, inclusive of additional fees for special stream education for her son (who suffers from dyslexia) at the British School of Paris. She also sought an order that the respondents reimburse her in the amount of €15, 564.24, being the expenses incurred by the applicant for payment of the special stream education fees during the academic year 2019-2020. An applicant launching proceedings for urgent relief, must institute those proceedings as soon as reasonably possible after the cause thereof has arisen. The cause in respect of the first claim arose on 29 July 2020, and on the second claim, in October 2019. The attempts by the applicant to negotiate and place the respondents on terms took place on 15 August 2020 and 11 September 2020. Even though these were attempts to negotiate, in each instance the respondents were given 5 days' notice within which the applicant would launch urgent proceedings in this court, if her requests were not met. Eventually the application was launched on 8 October 2020 for hearing on 9 October 2020. In the circumstances the urgency was entirely self-created. The attempts to negotiate did not absolve the applicant from her responsibility to institute as soon as reasonably possible and to give sufficient time to the respondents to meaningfully oppose the application. Application struck from the Roll with costs.

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### ORDER

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- (a) The application is struck from the Roll for lack of urgency.
- (b) The applicant is ordered to pay the costs of the first respondent.
- (c) The matter is deemed finalised and removed from the roll.

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## JUDGMENT

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SCHIMMING-CHASE, AJ

- (d) The applicant launched an urgent application against the Minister of Higher Education and Training (“the Minister”), together with the Public Service Commission and other respondents, for an order directing the respondents to pay full tuition fees, inclusive of additional fees for special stream education for her son (who suffers from dyslexia) at the British School of Paris. She further seeks an order that the respondents reimburse her in the amount of €15, 564.24, being the expenses incurred by the applicant out of her own pocket for the special stream education during the academic year 2019-2020.
- (e) The application was served on the respondents on 8 October 2020. In the notice of motion, the respondents were provided 2 hours from the time of service of the application, to file a notice to oppose the application, and five hours from this period within which to deliver answering affidavits. If no intention to oppose was provided, the application would be heard at 09:00 on 9 October 2020. On 9 October 2020, the matter was postponed to enable the respondents to consider the application and to file answering papers, and also to obtain instructions from the Minister on aspects not relevant to the determination of the matter. The applicant was also provided opportunity to deliver replying papers.
- (f) The applicant is employed by the Ministry of Higher Education and is seconded as a Deputy Permanent Delegate to UNESCO in Paris, France since July 2015. Her contract was extended on numerous occasions, the current one ending on 31 July 2021.

- (g) The basis for the relief sought lies in the interpretation of certain provisions of the Foreign Service Regulations, and whether the Minister and/or the Public Service Commission is obliged to, in addition to paying tuition fees, pay additional fees for the special stream education specifically designed for the applicant's son, who is dyslexic. There is a dispute on the interpretation of the Foreign Service Regulations, but in view of the order I make in this application, this dispute is not ripe for consideration.
- (h) The Minister deposed to the answering affidavit on behalf of all the respondents, taking the point (amongst others) that the application was not urgent, and if urgent, that the urgency was entirely self-created.
- (i) The first hurdle to cross in this application is that of urgency. It is trite that the court must be satisfied that the applicant has properly and explicitly set out the circumstances that render the matter urgent, and provide sufficient reasons why she cannot be afforded substantial redress at a hearing in due course. The court is also enjoined by the provisions of Rule 73 (3) to see to it that the measure of the applicant's non-compliance with the rules sought to be condoned, is tailored to the concomitant degree of urgency that is alleged to exist.<sup>1</sup>
- (j) The applicant in her founding papers avers that she addressed an email to the Executive Director of the Ministry on 19 September 2019, explaining that the British School of Paris had offered her son specialised interventions to assist him with his learning difficulties, which was not properly structured at his previous school. A request was made by the applicant to the Ministry for payment of the special additional fees. In a response dated 26

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<sup>1</sup> *Shetu Trading CC v The Chair of the Tender Board and Others* unreported (A 354/2010) NAHC 179 (22 June 2011).

September 2019, the applicant was formally informed that the Ministry was guided by Foreign service Rule 12.2, and undertook to only pay the once off registration fee, tuition fee and for extras which form part of the school curriculum such as school books and stationery per academic year. According to the Executive Director, the Foreign Service Rules “clearly indicate that any other extra charges should be paid by the staff member.”

- (k) The applicant responded to this correspondence on 11 October 2019, and explained that the foreign posting Rules were silent on special needs.
- (l) The applicant then travelled to Namibia in 2019 and borrowed €15 564.64 to pay for her son’s special stream education. Between this date and 29 June 2020, the founding papers are silent on the efforts made by the applicant to seek judicial assistance on the issue, given the refusal by the Minister to pay the special stream educational costs. This is relevant in the context of the prayer for reimbursement of the amount claimed in the applicant’s notice of motion.
- (m) The applicant picks up her explanation of events leading to this application with correspondence dated 29 June 2020, where the Executive Director of the Ministry informed her that her request for educational support in the form of the special stream education allowance for her son for the 2020/2021 academic year at the British School of Paris was discussed by the Public Service Commission, and it was resolved (by the Public Service Commission) not to pay the special stream fees.
- (n) In the meantime, the British School of Paris indicated to the applicant that the last date for payment of tuition fees would be on 30 September 2020, and that if she does not meet this deadline, her son will be deregistered. It is not clear on the papers before

court, on which date this correspondence from the school was received by the applicant. On the applicant's version of events, it would appear she received the news on or about 1 September 2020. The applicant also made it clear that the school year starts in October.

- (o) After receipt of this correspondence on 29 June 2020, the applicant avers that in an attempt to reach an amicable resolution, she addressed several correspondences to the Executive Director, but that no fruitful response was forthcoming. The first formal attempt on the papers is correspondence emanating from her legal practitioners dated 15 August 2020, some two weeks later . In this correspondence, the Executive Director was inter alia put on terms as follows

'Kindly effect payment within (5) days of receipt of this letter. In the event of failing to cede to the abovementioned demands, we shall institute urgent application in the High Court of Namibia to compel your esteemed institution for payment herein'.

- (p) The applicant was informed by the Executive Director on 27 August 2020 to direct her queries to the Office of the Government Attorney. The applicant then addressed correspondence to the Government Attorney on 11 September 2020. This time the Government Attorney was informed that the applicant was advised to compile a request for a review by Mr Albertus Aochamub, which was provided in the aforementioned correspondence. The Government attorney was similarly given 5 days to respond, failing which proceedings for urgent relief would be instituted, as the British School of Paris would deregister her son if payment was not made before 30 September 2020. No response was forthcoming from the Government Attorney.

- (q) From the papers it is apparent that on 5 October 2020, the Ministry once again, only made payment for tuition fees and related costs

and not for the special stream education. In further correspondence, the applicant was also informed that the School wished payment of the special stream fees to be made by 2 October 2020.

- (r) The above facts necessitated the applicant's resort to the institution of urgent relief on the time lines referred to above.
- (s) The applicant also alleges in support of her urgency that there are no alternative remedies open to her, and that the Ministry unreasonably exercised its discretion to refuse to pay special stream additional education costs. She alleges also that she is not in a financial position to pay the education costs again as she is already in debt.
- (t) From the applicants own papers, and specifically with regard to the prayer for reimbursement of €15 564.24, it is clear that her request for special stream funding was denied in October 2019 already. This is why she had to take a loan from the bank. The facts giving rise to her application for legal redress therefore arose in October 2019, and nothing was done to further her financial claim, especially given the dispute on the interpretation of the Rules.
- (u) The stance of the Ministry and the Public Service Commission remained the same one year later, on 29 June 2020. The applicant had an opportunity from this date of refusal to seek payment for the academic year 2020/2021, at the very least in the normal course. Instead the decision was made to address a letter to the Minister on 15 August 2020, requiring a favourable response under threat of the launching of an urgent application within 5 days. Granted, the applicant was informed to contact the Government Attorney, but only did so on 11 September 2020. Again, 5 days' notice of an urgent application was provided.

- (v) The applicant submits in this regard that the correspondence and additional information provided was specifically with the intention to reach an amicable solution and to engage the Minister's Office, however since they were "stonewalled", coupled with her financial difficulties and threatened deregistration of the applicant's son by 2 October 2020, she had no other option but to launch these urgent proceedings.
- (w) The urgent application was then launched on 8 October 2020 against 4 Governmental respondents, and set down for hearing on 9 October 2020, on extraordinarily short time periods within which to oppose and deliver answering papers.
- (x) It is apparent that the above scenario resembles the situation in the matter of *Bergmann v Commercial Bank of Namibia*<sup>2</sup> in the sense that the applicant's attempts to negotiate and reach an amicable resolution did not absolve her of the duty to institute urgent proceedings as soon as reasonably possible after the cause thereof had arisen. The cause arose for the claim for payment for the special stream for the academic year 2020/2021, on 29 June 2020 already. The claim for urgent reimbursement of the amount of € 15 564.24 arose in 2019 already. Two threats of launching urgent proceedings within 5 days were also made by the applicant.
- (y) Taking the above facts into consideration, the court is of the view that the applicant's urgency is entirely self-created, and is not satisfied that the applicant has properly and explicitly set out the circumstances that render the matter urgent (and so urgent as to haul the respondents to court on 1 days' notice).
- (z) As costs follow the event, the applicant must bear the costs of the application.

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<sup>2</sup> *Bergmann v Commercial Bank of Namibia* 2001 NR 48 HC.



(aa) In light of the foregoing, the following order is made:

- (a) The application is struck from the roll for lack of urgency.
- (b) The applicant is ordered to pay the costs of the first respondent.
- (c) The matter is deemed finalised and removed from the roll.

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EM SCHIMMING-CHASE  
Acting Judge

## APPEARANCES

APPLICANT:

M Angula  
Of AngulaCo Inc.  
Windhoek

1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> AND 4<sup>th</sup> RESPONDENTS:

N Tjahikika  
Of Government Attorney  
Windhoek