REPUBLIC OF NAMIBIA REPORTABLE

HIGH COURT OF NAMIBIA MAIN DIVISION, WINDHOEK

JUDGMENT

Case no: HC-MD-CIV-MOT-GEN-2021/00232

In the matter between:

CHIEF MAGISTRATE: PHILANDA CHRISTIAAN	**1st APPLICANT**
AUGUSINUS UCHAM	**2nd APPLICANT**
THE MINISTER OF URBAN AND RURAL DEVELOPMENT	**3rd APPLICANT**

and

CHIEF REGIONAL OFFICER: //KHARAS REGIONAL COUNCIL	**1st RESPONDENTS**
REGIONAL COUNCILLOR: GERRIT WITBOOI	**2nd RESPONDENTS**
REGIONAL COUNCILLOR: ANSELINE BEUKES	**3rd RESPONDENTS**
REGIONAL COUNCILLOR: JOSEPH ISAACKS	**4th RESPONDENTS**
REGIONAL COUNCILLOR: JEREMIAS GOEIEMAN	**5th RESPONDENTS**
REGIONAL COUNCILLOR: TAIMI KANYEMBA	**6th RESPONDENTS**
REGIONAL COUNCILLOR: LAZARUS ANGULA NANGOLO	**7th RESPONDENTS**
REGIONAL COUNCILLOR: SUZAN NDJALEKA	**8th RESPONDENTS**
SECRETARY TO THE NATIONAL COUNCIL	**9th RESPONDENTS**
SOUTH WEST AFRICA PEOPLE'S ORGANIZATION	**10th RESPONDENTS**

OF NAMIBIA (SWAPO)
LANDLESS PEOPLES MOVEMENT **11th RESPONDENTS**
CHAIRPERSON OF THE MAGISTRATES COMMISSION **12th RESPONDENTS**
MAGISTRATE UNCHEN KONJORE **13th RESPONDENTS**
ELECTORAL COMMISSION OF NAMIBIA **14th RESPONDENTS**

Neutral citation: *Christiaan and Others v Chief Regional Officer: //Kharas Regional Council and Others* (HC-MD-CIV-MOT-GEN-2021/00232) NAHCMD 309 (30 June 2021)

Coram: PARKER AJ
Heard: **18 June 2021**
Delivered: **30 June 2021**

Flynote: Applications and motion – Urgent applications – Applicant must satisfy both requirements of rule 73(4) of the rules of court together to succeed – Applicant failed to satisfy the two requirements for urgency – Consequently, application refused for lack of urgency.

Summary: Practice – Applications and motions – Urgent applications —– Applicant must satisfy the requirements of r 73 (4) of the rules of court together for the matter to be heard on the basis of urgency – Applicants have not set out explicitly why they claim they could not be afforded substantial redress in a hearing in due course if matter was heard in the ordinary course – As at 9 April 2021 the illegalities that gave applicants the basis to launch the application had already been discovered by first applicant – But applicant instituted the application on 11 June 2021 – Accordingly, court finding that besides applicant failing to satisfy the two prescribed requirements for urgency, the urgency in the application is self-created – Consequently, court refusing the application for lack for urgency.

ORDER

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1. The application is refused for lack of urgency.
2. The matter is struck from the roll with costs, including costs of one instructing counsel and one instructed counsel.
3. The matter is considered finalized and is removed from the roll.

JUDGMENT

PARKER AJ

[1] The applicants instituted the instant application and prays the court to hear it on the basis that it is urgent. In essence, applicants seek declaratory relief in Part A of the notice of motion pending the outcome of the relief of reviewing and setting aside certain acts by the respondents complained of in Part B of the notice of motion. The second, third, fourth, fifth and eleventh respondents ('the respondents') have moved to reject the application; and at the threshold, the respondents reject the applicants' prayer that the matter be heard on the basis that it is urgent.

[2] The applicants are represented by Mr. Ncube; and the respondents Mr. Narib. I instructed counsel to address me on the issue of urgency only, since there is a dispute as to whether the matter should be heard on the basis that it is urgent. Therefore, it is the issue of urgency that I direct the enquiry.

[3] In the very recent case of *Temptation Fashion CC v Sannamib Investments (Pty) Ltd* NAHCMD 298 (17 June 2021), I rehearsed what I had said on the question of urgency in *Fuller v Shigwele* NAHCMD 15 (15 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 accorded substantial redress in due course. It is well settled that for an applicant to succeed in persuading the court to grant indulgence sought, that the matter to be heard on the basis of urgency, the applicant must satisfy both requirements together. 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 bear the application on the basis of urgency.'

[4] In the instant matter, since ongoing illegalities on the part of public authorities are complained of and, therefore, rule of law is at stake here, it could be said that that constitutes circumstances that render the matter urgent. But that satisfies the first requirement of urgency in terms of para (a) of subrule (4) of r 73 only. But both requirements in para (a) and (b) of r 73(4) must be satisfied to succeed. (*Temptation Fashion CC* para 5) Apart from that, urgency should not be self-created. (*Bergmann*)

[5] I have searched every nook and cranny of applicants' papers, and I do not find that they have set out explicitly the reason why they claim they could not be afforded substantial redress at a hearing in due course. Accordingly, I find that applicants have not satisfied the requirement under para (b) of s 73(4).

[6] On top of that, I see in the papers that first applicant, in her own founding papers, state categorically and unambiguously that she discovered the irregularities, that is, the illegalities complained of, on 9 April 2021, but waited until 11 June 2021 to approach the court at breakneck speed to seek redress and pray the court to hear the matter on the basis that it is urgent. It is not the case where first applicant avers that she received reports about the illegalities from her subordinates or suchlike officials and she had to investigate them for confirmation. As at 9 April 2021 she had discovered the irregularities that gave her the basis to launch the instant application. In that regard, I should say, applicants cannot be thankful of the dictum on the factors referred to by Smuts J in *Petroneft International and Another v Minister of*

Mines and Energy and Others [2011] NAHC 125 para 32 which a court assessing urgency ought to take into account. Applicants do not say any of those factors apply in the instant matter to explain why applicants did not act with speed and promptitude to seek redress which they now seek at great speed when as at 19 April 2021 the irregularities or illegalities complained of had already been 'discovered'.

[7] The conclusion is, therefore, inescapable that applicants have not satisfied all the requirements for urgency prescribed by r 73(4) of the rules of court. On this ground alone the application stands to be refused for lack of urgency. Besides, since the urgency is self-created by the applicants, the court should decline to condone the applicants' non-compliance with the rules.

[8] Based on these reasons, I order as follows:

1. The application is refused for lack of urgency.
2. The matter is struck from the roll with costs, including costs of one instructing counsel and one instructed counsel.
3. The matter is considered finalized and is removed from the roll.

C Parker

Acting Judge

APPEARANCES

1st – 3rd APPLICANT:	J NCUBE Of the Government Attorney, Windhoek
2nd -5th, 11th RESPONDENTS:	G NARIB Instructed by Dr Weder, Kauta & Hoveka Inc., Windhoek