



HIGH COURT OF NAMIBIA MAIN DIVISION, WINDHOEK

JUDGMENT

Case No.: HC-MD-CIV-MOT-REV-- 2021/00262

In the matter between:

HETERO LABS LTD

1st APPLICANT

and

**THE CHAIRPERSON OF THE CENTRAL
PROCUREMENT BOARD OF NAMIBIA**

1st RESPONDENT

THE REVIEW PANEL

2nd RESPONDENT

THE MINISTER OF HEALTH AND SOCIAL SERVICES

3rd RESPONDENT

AFRICURE PHARMACEUTICALS NAMIBIA (PTY) LTD

4th RESPONDENT

NAMPHARM (PTY) LTD

5th RESPONDENT

Neutral citation: *Hetero Labs Ltd V the Chairperson of the Central and Others*
(HC-MD-CIV-MOT-REV- 2021-00262) [2021] NAHCMD 337 (19
July 2021)

Coram: PARKER AJ

Heard: 16 July 2021

Delivered: 19 July 2021

Flynote: Practice – Applications and motions – Urgency – Applicant’s counsel though appearing in court but not ready to move the application – Applicant seeking postponement of hearing of urgent application – Court refusing to accede to such inimical request – Court held, the request was offensive of the overriding objective of the rules of court – Court held further, since applicant persisted with the hearing of the matter as urgent the proper course was for applicant to withdraw the present urgent application and launch an urgent application whenever it wished to do so and ready to move such application – Accordingly, matter struck from the roll with costs.

Summary: Practice – Applications and motions – Urgency – Applicant filing urgent application to challenge by review decision of the Central Procurement Board of Namibia in a tender process – On set down hearing date applicant’s counsel not ready to move the application – By a joint status report applicant and fourth respondent (successful bidder) agreeing to a postponement of the hearing of the application – Court refusing to grant their request because their request would throw the proceedings to the yester-dark-days of gone-by years when litigation in the court was controlled by litigants, which most invariably resulted in delays in the finalization of cases filed at the court – Court finding that if request was allowed it would set at nought the overriding objective of the rules of court – Consequently, court struck the matter from the roll with costs.

ORDER

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

RULING

PARKER AJ:

[1] Once more, an applicant has moved the court challenging a decision whereby the applicant was unsuccessful in a bid for a tender for services. The amended notice of motion, which was filed on 30 June 2021, has a 'PART A', wherein applicant prays the court to hear the matter on the basis that it is urgent and suspend 'the implementation of the award of the tender with Procurement Reference Number G/OIB/CPBN-03/2020, and the implementation of any contract that may have been concluded between the respondents in respect of this tender pending the final determination of the review application in Part B'. Mr Maarsdorp represents the applicant.

[2] The first and third respondents filed notices to oppose the application. Fourth respondent moved to reject the application; and is represented by Mr Chibwana.

[3] At the commencement of the hearing, Mr Maarsdorp drew the court's attention to a joint status report filed a day before the hearing of the application and whose thrust is essentially and primarily a request to postpone the hearing of the urgent applicant to 09h00 on 13 August 2021. Having heard Mr Maarsdorp and Mr Chibwana, I ordered as follows:

- (a) The application is struck from the roll with costs, including costs of one instructing counsel and one instructed counsel.
- (b) The matter is considered finalized and is removed from the roll.

[4] These are the reasons for the order. First and foremost, the agreement between applicant and fourth respondent and any other respondents, who put in no appearance during the hearing, does not bind the court. That much Mr Maarsdorp appreciates. The applicant, on its own volition, decided to drag the respondents to court, praying the court to hear the matter, on the basis that it is urgent, at 09h00 on 16 July 2021. The court was prepared to hear the application. In response to a question from the court, Mr Maasdorp submitted that he was not ready to move the application at the time and date appointed and set down by applicant itself; apparently, he was only ready to do so at 09h00 on 13 August 2021.

[5] The court was not prepared at all to accede to the whims and caprices of the parties as laid out in the parties' joint status report. What the applicant and fourth

respondent wished the court to do had the inimical effect of allowing the parties to throw the proceedings into the yester-dark-days of gone-by years where litigation in the court was controlled by litigants which most invariably resulted in 'delays in the finalisation of cases filed at the court'. (Petrus T Damaseb *Court-Managed Civil Procedure of the High Court of Namibia: Law, Procedure and Practice* 1st ed (2020) at 79)

[6] As I understand para 14.4 of the joint status report, the applicant persists with the hearing of the matter as urgent. All well and good. In that event, since applicant persisted with the hearing of the matter as urgent, the proper course was for applicant to withdraw the present urgent application and launch an urgent application whenever it wished to do so and ready to move such application. Such a course would not defeat the overriding objective of the rules of court so clearly set out in r 1(3), particularly paras (d) and (e), of the rules of court.

[7] By refusing to accede to the parties' unacceptable request, the court has not denied the applicant its right to approach the seat of judgment of the court to vindicate a right it may have; neither has the court denied the parties their right to have their dispute adjudicated on by the court. But the court should not fall for a stratagem that would in effect give the court's blessing to the parties' desire to set at nought the aforementioned overriding objective of the rules of court.

[8] Based on these reasons, the order appearing in para 3 above was made.

C Parker
Acting Judge

APPEARANCES:

APPELLANT:

R Maasdorp

Instructed by Fisher, Quarmby & Pfeifer,
Windhoek4th RESPONDENT:

T Chibwana

Instructed by Brockerhoff & Associates,
Windhoek