



HIGH COURT OF NAMIBIA MAIN DIVISION, WINDHOEK

JUDGMENT

Case No.: HC-MD-CIV-MOT-GEN-- 2021/00040

In the matter between:

ALBERTUS BEBE /HUSEB

APPLICANT

and

HELVI NDILIMEKE UUSHONA

RESPONDENT

Neutral citation: *!Huseb v Uushona* (HC-MD-CIV-MOT-GEN-2021/00040) [2021]
NAHCMD 54 (19 February 2021)

Coram: PARKER AJ

Heard: 17 February 2021

Delivered: 19 February 2021

Flynote: Practice – Applications and motions – Urgent applications – Applicant must satisfy the requirements of r 73 (4) of the rules of court for the matter to be heard on urgent basis – Furthermore, there can be no urgency when urgency is self-created.

Summary: Practice – Applications and motions – Urgent applications – Applicant must satisfy the requirements of r 73 (4) for the application to be heard as a matter of

urgency – Court finding that applicant has known since 1 November 2020 that respondent was occupying his property unlawfully – Applicant waited until 17 February 2021 to institute the proceeding at extremely breakneck speed, praying the court to hear the matter on the basis of urgency – Court finding that any negotiations that took place between applicant and respondents' sister was not capable of satisfying the requirement in r 73 (4) (a) – Court finding further that applicant had not set forth explicitly the reasons why he claims he could not be afforded substantial redress in due course – Consequently, court refused the application for lack of urgency.

ORDER

1. The application is refused for lack of urgency, and is struck from the roll.
2. There is no order as to costs.
3. The matter is considered finalized and is removed from the roll.

JUDGMENT

PARKER AJ:

[1] The applicant appears in person in the instant application wherein he prays the court to hear the case as a matter of urgency.

[2] Applicant seeks the relief that respondent be evicted from applicant's property, namely, ERF 7267, Extension No.17 Katutura, Windhoek. From his submission to the court, applicant has known that respondent occupies his property unlawfully since 1 November 2020.

[3] In the instant proceedings the burden of the court is to consider and determine the issue of urgency only. I therefore repeat hereunder what, relying on the authorities, I said in *Fuller v Shiwele* (A 336/2014) [2015] NAHCMD 15 (15 February 2015), para 2:

'Urgent applications are now governed by rule 73 of the rules of court (i.e. rule 6 (12) of the repealed rules of court), and subrule (4) provides that in every affidavit filed in support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 afforded substantial redress in due course. It is well settled that for an applicant to succeed in persuading the court to grant the indulgence sought, that the matter be heard on the basis of urgency, the applicant must satisfy both requirements. 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 hear the application on the basis of urgency.'

[4] Applicant has not set forth explicitly (1) the circumstances which he avers render the matter urgent, and (2) the reasons why he claims he could not be afforded substantial redress at a hearing in due course within the meaning of r 73 (4) (a) and (b) of the rules of court.

[5] As to r 73 (4) (a), applicant submitted that he had been negotiating with the sister of respondent in his effort to get respondent to get out of his property. But such submission does not answer the requirement in r 73 (4) (a). The fact that negotiations went on could not prevent applicant to approach the court to seek the relief he now seeks at extremely breakneck speed. He has, as I have said previously, known since 1 November 2020 that respondent was occupying his property unlawfully, but brought the application to evict her at 11H27 on 17 February 2021 and prays the court to hear the matter on the basis of urgency. Applicant set the matter down for hearing at 15H00, and gave respondent less than four hours to file notice of opposition. The conclusion is reasonable and inescapable that the urgency is self-created. (*Bergmann v Commercial Bank of Namibia Ltd and Another* 2001 NR 48 (HC))

[6] As respects satisfying the requirement in r 73 (4) (b), applicant has not set forth explicitly reasons why applicant claims he could not be afforded substantial redress in due course. All that he says is that the property 'is his primary place of dwelling and thus wishes to occupy same'. But this statement cannot satisfy the

requirement of r 73 (4) (b). Besides, if the property is his 'primary place of dwelling', he does not say when the property became his 'primary place of dwelling' as respondent continues to occupy the property.

[7] Based on these reasons, I conclude that applicant has not satisfied the dual requirements of r 73 (4), and so the court ought to decline granting the indulgence he prays the court for, namely, to hear the matter on urgent basis.

[8] In the result, it is ordered as follows:

1. The application is refused for lack of urgency, and is struck from the roll.
2. There is no order as to costs.
3. The matter is considered finalized and is removed from the roll.

C Parker
Acting Judge

APPEARANCES:

APPELLANT:

A /HUSEB

In person

RESPONDENT:

H UUSHONA

In person