Practice Directive 61

REPUBLIC OF NAMIBIA

IN THE HIGH COURT OF NAMIBIA, MAIN DIVISION, WINDHOEK

Case Title:	**Case No:** HC-MD-CIV-MOT-GEN-2022/00029
Seawork Fish Processors (Pty) Ltd v Green Rose Trading (Pty) Ltd and Others	**Division of Court: High Court** Main Division
Heard before: Honourable Mr Justice Masuku	**Heard on:** 28 January 2022 **Delivered on:** 4 February 2022
Neutral citation: Title: *Seawork Fish Processors (Pty) Ltd v Green Rose Trading (Pty) Ltd and Others (HC-MD-CIV-MOT-GEN-2022/00029)[2022] NAHCMD 34 (4 February 2022)*	
The order: 1. The application is refused for lack of urgency, and is therefor struck from the roll. 2. The Applicant is to pay the costs of the application, consequent upon the employment of one instructing counsel and two instructed counsel, where so employed.	
Reasons for order:	
[1] The applicant, represented by Mr. Heathcote, brought an application by notice of motion, and prays the court to hear the matter on the basis of urgency. The first, second, fourth to ninth respondents oppose the application. The first, fourth to ninth respondents were represented by Mr. Strydom and second respondent was represented by Mr. Wylie. [2] The matter revolves around a Quota Participation Agreement entered into between the	

applicant and the first respondent whereby the latter gave rights to exploit the quota to the applicant. The first respondent entered into a joint venture regarding the quota with the fourth to ninth respondents, who are allegedly refusing the applicant the rights to exploit the quota.

[3] The main relief sought by the applicant in this urgent application is to interdict the first, fourth to ninth respondents from selling or in any way disposing of the quota described in the Quota Participation Agreement between applicant and first respondent. It further seeks to prohibit the second respondent from acquiring or buying quotas from the first, fourth to ninth respondents and also to be prohibited from commencing exploitation of the said quota.

[4] The basis of the urgency alleged is that the first, fourth to ninth respondents have secretly sold the right to exploit the quota to the second respondent.

[5] The first, second, fourth to ninth respondents take the point that the application is not urgent and that the requirements for urgency set out in rule 73 of this court's rules have not been complied with.

[6] The court finds that the application is not urgent in that the application did not comply with the mandatory requirement in rule 73 (1), read with Practice Direction 27 (4) in that the applicant's legal practitioner failed to certify as mandatorily required by the said rule and practice direction, that the matter was so urgent that it should be heard at any time other than 09:00.

[7] Furthermore, despite the gallant oral efforts by Mr. Heathcote in argument, the court is of the considered view that the mandatory requirements of rule 73(4)(a) and (b), were not properly addressed in the founding affidavit.

[8] From a reading of the applicant's founding papers, it becomes plain that there was a real threat that the first, fourth to ninth respondent would not avail the rights to exploit the quota since 30 November 2021, notwithstanding the Quota Participation Agreement between applicant and the first respondent. Such threat still existed on 9 December 2021. It follows, as night follows day, in my reasoning, that the applicant should have taken the necessary steps

with deliberate speed and promptness soon after 10 December 2021 in order to protect the interests that applicant at this late hour seeks to protect by an urgent applicant. This is to the detriment of the respondents' procedural rights in that they had barely a few hours within which to consult their legal practitioners and to file opposing papers.

[9] I find therefore that applicant has not set forth explicitly the circumstances which it avers render the matter urgent as required in imperative terms by the rules of court.

[10] Based on the foregoing reasoning and conclusions and upon the authority of *Bergman v Commercial Bank of Namibia Ltd and Another* 2001 NR 48, I find that the urgency that may be said to exist, was self-created. *Bergman* tells us that where urgency in an application is self-created as a result of culpable remissness or delay by the applicant, the court should decline to condone the applicant's non-compliance with the rules and accordingly refuse to hear the application on the basis of urgency.

[11] I am of the considered view that the reasoning in *Bergman a*pplies in the instant case. Consequently, the application must be struck from the roll for lack of urgency.

1. The application is refused for lack of urgency, and is therefore struck from the roll.

2. The Applicant is to pay the costs of the application, consequent upon the employment of one instructing counsel and two instructed counsel, where so employed.

Judge's signature	**Note to the parties:**
	Not applicable.
Counsel:	
Applicant	**Respondent**
R. Heathcote SC, with him R. Lewies Instructed by Ellis and Partners Legal Practitioners of Windhoek	First, fourth to ninth respondents J Strydom instructed by Cronje Inc of Windhoek

	Second respondent T. Wylie with him E. Nekwaya instructed by Ellis Shilengudwa Inc of Windhoek