REPUBLIC OF NAMIBIA

IN THE HIGH COURT OF NAMIBIA, MAIN DIVISION, WINDHOEK

EX-TEMPORE

Case Title: Angela Kachana Ntemwa v National Commission On Research, Science And Technology & Another	**Case No:** HC-MD-CIV-MOT-GEN-2022/00290
	Division of Court: High Court (Main Division)
Heard before: Honourable Lady Justice Schimming-Chase	**Date of hearing:** 8 July 2022
	Ex tempore judgment delivered on: 8 July 2022 **Ex tempore reasons delivered on:** 22 July 2022

Neutral citation: *Ntemwa v National Commission On Research, Science And Technology* (HC-MD-CIV-MOT-GEN-2022/00290) [2022] NAHCMD 363 (8 July 2022)

IT IS ORDERED THAT:

1. The application is struck from the roll with costs for lack of urgency.
2. The urgent application is regarded finalised.

Reasons for the order:

SCHIMMING-CHASE, J:

Introduction

[1] This is an urgent application wherein the applicant seeks to interdict the respondent, being the National Commission on Research, Science and Technology, from proceeding with the process of recruitment of the position of Head of Corporate Communications and Marketing. This relief, it appears, is sought pending the finalisation of an internal grievance procedure launched by the applicant (in person), in an attempt to be permitted to participate as a potential candidate for the aforementioned position.

Urgency

[2] Rule 73 governs urgent applications in this court. Rule 73(3) and Rule 73(4) provide that:

'(3) In an urgent application the court may dispense with the forms and service provided in these rules and may dispose of the application at such time and place and in such manner and in accordance with such procedure which must as far as practicable be in terms of these rules or as the court considers fair and appropriate.

(4) In an affidavit filed in support of an application under subrule (1), the applicant must set out explicitly - (a) the circumstances which he or she avers render the matter urgent; and
(b) the reasons why he or she claims he or she could not be afforded substantial redress at a hearing in due course. . .' (emphasis supplied)

[3] A consideration of the applicant's notice of motion and founding affidavit make it apparent that the applicant has failed to meet the threshold which every applicant in an urgent application should meet, as required by Rule 73(3) and (4). I demonstrate below why this is the case

[4] Firstly, in the notice of motion, the applicant does not seek an order that the court dispense with the forms and service provided in the rules nor does the applicant pray that the matter be heard as one of urgency. In *Kempinski Nature Reserve Estate CC v Square Foot Developers*[1] Masuku, J reasoned that this failure has the effect that the

application cannot be regarded as one that is urgent because the court grants orders based on the prayers requested in the notice of motion, and the prayer requesting the matter to be heard as one of urgency, is critical, as it determines how the court is requested to deal with the matter so that an applicant can 'jump the queue' as it were. Thus, the absence of the relevant prayer in the notice of motion is accordingly fatal and should result in the matter not being so enrolled.

[5] Further, it is necessary to point out that, the notice of motion is not on form 17. On form 17, an applicant is required to set out timelines within which an answering affidavit is to be delivered by the respondents who elect to oppose the application, and in this regard to set out the timelines for a replying affidavit as well. The applicant's notice of motion does not contain any provision for the delivery of an answering affidavit, only for the delivery of a notice to oppose.

[6] Secondly, the applicant's founding affidavit does not explicitly set out the circumstances that renders her application urgent and the reasons why she is of the view that she cannot be afforded substantial redress in due course. No facts in support of urgency or even the time frame relied on which renders the matter urgent are provided at all.

[7] Thirdly, the applicant attaches quite a number of annexures in her affidavit. These annexures are not properly identified. More importantly the court is not apprised in any way or form, on which portions of the annexures attached she relies on for the relief sought.

[8] In *Nelumbu and Others v Hikumwah and Others*[2], the Supreme Court reiterated the principles related to affidavits in motion proceedings as follows. Evidence in motion proceedings is contained in the affidavits filed by the parties. The affidavits constitute both the pleadings and the evidence and enables the court to define the issues between the parties. The affidavits also enable the parties to know the case that must

[1] *Kempinski Nature Reserve Estate CC v Square Foot Developers* (HC-MD-CIV-MOT-GEN-2019/000317) [2019] NAHCMD 304 (27 August 2019) para 2.
[2] *Nelumbu and Others v Hikumwah and Others* 2017 (2) NR 433 (SC) at paras 41-44 and the authorities there collected.

be met, and in respect of which they must adduce evidence in their affidavits. Since affidavits constitute both the pleadings and the evidence in motion proceedings, a litigant must ensure that all the evidence necessary to support the case is included in the affidavit. When reliance is placed on material contained in annexures, the affidavit must clearly state what portions in the accompanying annexures the deponent relies on. It is not sufficient merely to attach supporting documents and to expect the opponent and the court to draw conclusions from them. In other words, it is not proper for a litigant to attach annexures without identifying in the affidavit the key facts in the annexure upon which the litigant relies. What is required is the identification of the portions in the annexures on which reliance is placed and an indication of the case which is sought to be made out on the strength of those portions.

[9] It is for the above reasons that the applicant's application falls to be struck.

[10] I take note that the respondents have filed notices of opposition. No answering affidavits have been filed yet. However, given the state of the founding papers at this stage, it would be in line with the principles of judicial case management, the integrity of the urgent roll, and judicial and other resources to consider the application as it stands, as it is trite that an applicant stands or falls by her founding papers.

[11] In the result the following order is made:

1. The application is struck from the roll with costs for lack of urgency..
2. The urgent application is regarded finalised.

Judge's signature:	**Note to the parties:**
Schimming-Chase J	Not applicable.
Counsel:	
Applicant	**Respondents**
A Ntemwa	L Williams

(In person)	Koep & Partners, Windhoek