

REPUBLIC OF NAMIBIA



HIGH COURT OF NAMIBIA MAIN DIVISION, WINDHOEK

Practice Directive 61

Case Title: RENTWORKS NAMIBIA (PTY) LIMITED APPLICANT and OCTAGON CONSTRUCTION (PTY) LIMITED 1 ST RESPONDENT ONGOS VALLEY DEVELOPMENT (PTY) LIMITED 2 ND RESPONDENT WELWITSCHIA CONSTRUCTION CC 3 RD RESPONDENT	Case No: HC-MD-CIV-MOT-GEN-2022/00503 Division of Court: HIGH COURT(MAIN DIVISION)
Coram: Coleman J	Date of Hearing: 4 NOVEMBER 2022 Date of Order: 11 NOVEMBER 2022
Neutral citation: <i>Rentworks Namibia (Pty) Limited v Octagon Construction (Pty) Limited</i> (HC-MD-CIV-MOT-GEN-2022/00503) [2022] NAHCMD xxx (11 November 2022)	
Order:	

1. The urgent application is struck from the roll.

2. The applicant is to pay 1st respondent's costs to include one instructing and one instructed counsel.

3. The matter is removed from the roll and regarded as finalized.

Reasons for orders:

COLEMAN J:

Introduction

[1] This is an urgent application for specific performance of a breach clause in a rental agreement in respect of construction equipment. Applicant wants the equipment rented to first respondent returned on an urgent basis. In essence, applicant's case is that first respondent is in breach of the rental agreement by being in arrears on payments. In the meantime, applicant alleges, first respondent ceded its rights in some equipment to second respondent and sold others to third respondent. This is all disputed by first respondent. First respondent insists the

equipment in question are all in its possession. In my view all this raise substantial disputes of fact.

[2] First respondent also raises the point that applicant did not comply with the requirements of rule 73 of the rules of the High Court. In particular, first respondent contends that applicant did not explicitly set out the reasons why it could not be afforded substantial redress in due course. This is a peremptory requirement.

[3] The construction equipment in contention will certainly not disappear from the face of the earth. The fact that they will deteriorate in value is inevitable and will happen anyway. I agree with first respondent that applicant did not make out a case for urgency in this matter. It appears to be quite common in urgent applications in this jurisdiction that an applicant either underestimate the importance of substantial redress in due course as a requirement for urgency, or entirely misses it.

[4] Substantial redress in due course does not only relate to damages as an ultimate remedy. It involves whether or not the applicant can achieve substantially the same result in the normal course as it is trying to achieve on an urgent basis.

[5] I take cognisance of the submissions on behalf of first respondent on costs, but do not see justification to award a higher scale of costs under the circumstances.

[6] Accordingly, I make the following order:

1. The urgent application is struck from the roll.

2. The applicant is to pay 1st respondent's costs to include one instructing and one instructed counsel.

3. The matter is removed from the roll and regarded as finalized.

Judge's signature	Note to the parties:
Coleman Judge	Not applicable.
Counsel:	
Applicant	Respondents
Adv Jacobs Instructed by Danielle Lubbe Attorneys, Windhoek	First Respondent Adv Kauta Instructed by Ndaitwah Legal Practitioners, Windhoek Second Respondent Ms Shigwedha (watching brief) Of Dr Weder, Kauta & Hoveka Inc., Windhoek