

REPUBLIC OF NAMIBIA



IN THE HIGH COURT OF NAMIBIA, MAIN DIVISION, WINDHOEK
RULING IN TERMS OF PRACTICE DIRECTION 61

Case Title: Imafon Akpabio and The Minister of Justice The Board for Legal Education	Applicant 2nd Respondent	Case No: HC-MD-CIV-MOT-GEN-2023/00326 Division of Court: Main Division Heard on: 26 July 2023
Heard before: Honourable Lady Justice Rakow	Delivered on: 27 July 2023	
Neutral citation: <i>Akpabio v The Minister of Justice</i> (HC-MD-CIV-MOT-GEN-2023/00326) [2023] NAHCMD 441 (27 July 2023)		
Order: <ol style="list-style-type: none">1. The urgent application is struck from the roll for a lack of urgency2. The costs of the application is awarded to the respondents, to include the costs of one instructed and one instructing legal practitioner.		
Reasons for order:		
RAKOW J: <u>Introduction</u> [1] The applicant, in the current matter, Ms Apabio, has been embroiled with the Board of Legal Education for some time regarding her admission as a legal practitioner. The matter has been heard by this court on a previous occasion, against which order she appealed and the appeal has been upheld by the Supreme Court and referred back to this court to hear evidence		

regarding her claim. This hearing before my brother Sibeya J is set to take place on 2 August 2023.

Background

[2] When the matter returned from the Supreme Court, it was subjected to case management and the parties filed a substantial status report setting out the issues that should be addressed during the hearing of evidence with the applicant including as part of the status report a section dealing with the specific evidence and witness statement of Ms Amber Coerecius. It seems from the status report that it was always the applicant's intention to have a witness statement from Ms Amber Coerecius as well as subpoenaing her as a witness.

[3] After hearing the parties, the court made the following order:

1. The respondents and any other person acting on their behalf as well as any witnesses subpoenaed and any other person with knowledge of this order is procluded from uploading the applicant's Bachelor's of Laws (LLB) transcript on the e-justice system.

2. The applicant must subpoena the following witnesses:

2.1 Ms Amber Coerecius

2.2 Mr Eliaser Nekwaya

3. The respondents must subpoena the following witness:

3.1 Ms Victoria Likius

4. The parties must file their witness statements on or before 27 July 2023 at 15:00

5. The case is postponed to 02 August 2023 at 09:00 for Opposed Motion hearing (Reason: Hearing of Oral evidence on the specified issue of whether the applicant as part of her application for the prescription of her LLB degree in terms of s 5(4) of the Legal Practitioner's Act 15 of 1995 (the LPA), submitted to the Board of Legal Education the original or authenticated copies of her LLB certificate and the transcript issued by the Obafemi Awolowo University in 1991, in terms of s 11(2) of the LPA.)

[4] It then seems that the applicant approached Ms Amber Coerecius to provide her with a witness statement, which request was apparently forwarded to the Board of Legal Education. In a letter, Ms Amber Coerecius was instructed that she is to testify on behalf of the Board of Legal Education and that she is not to consult with the applicant for the purposes of drafting a witness

statement. A copy of this letter was attached to the founding affidavit of the applicant. She then proceeds and narrate in her founding affidavit what she was told by Ms Amber Coerecius regarding a meeting she had with the respondents legal counsel but this is not supported by a confirmatory affidavit and is at most hear say. Ms Amber Coerecius however did indicate to the applicant on 20 July 2023 that she is not prepared to provide a witness statement to the applicant but that she would attend the court session of 2 August 2023 as she was a subpoenaed witness. The applicant conceded that she had very little to no engagement with Adv. Nekwaya and therefore does not know what his position is.

Relief

[5] The following relief was requested by the applicant:

- '1. The applicant's non-compliance with the Rules of Court relating to form, service and the time periods for the exchange of papers is hereby condoned and the application is heard as one of urgency in terms of Rule 73.
2. The respondents and their attorneys are restrained from engaging in any harassing conduct resulting in the intimidation of the applicants' witnesses and the suppression of evidence for the hearing of oral evidence from Ms Amber Coerecius and Advocate Eliaser Nekwaya.
3. An order is issued prohibiting any direct contact with the applicant's witnesses for the purpose of discussing the case until after the date of the hearing of oral evidence in the matter. In the instances where the respondents have to contact Ms Amber Coerecius for the purpose of obtaining any document relevant to the case during this period, or for the purpose of her official duties in the Ministry of Justice, communication and engagement with her for that purpose shall where possible, be through other members of staff of the Ministry of Justice.
4. The applicant's witnesses are mandated to comply fully with the court order of 14 July 2023 including the preparation of witness statements, attendance at Court for the giving of oral evidence and to consult with the applicant as deemed necessary without any inhibition.
5. The respondents opposing this application are directed to pay the applicant's expenses.
6. Further and/or alternative relief.'

The stance of the respondent

[6] The second respondent in their reply indicated that they at no time harassed Ms Amber Coerecius and Adv. Nekwaya. It was further pointed out that Ms Amber Coerecius is an employee of the first respondent and as such is assigned to the second respondent. When the legal representative of the respondents, Ms Frieda da Silva of the Government Attorney's office,

attended a consultation with their witness, Ms Victoria Likius, on 20 July 2023, Ms Amber Coerecius was also present. Ms Victoria Likius is the current secretary of the second respondent whilst Ms Amber Coerecius was the previous secretary of the second respondent.

[7] It is correct that Ms Amber Coerecius refused to provide the applicant with a witness statement and it seems that that now left the applicant with an apparent misconceived notion that the respondents are harassing witnesses and/or suppressing evidence, which allegations are denied in the strongest terms. Together with their answering affidavit, the respondents also filed a confirmatory affidavit of Ms Amber Coerecius indicating that she read the answering affidavit of the second respondent and the content of the answering affidavit is true and correct.

[8] It is indicated that the respondents oppose the application on the applicant's misconceived basis for bringing this application and further, that the application lacks urgency.

Legal position regarding urgency

[9] Regarding the urgency of the application, the applicant must make out a case that the application is urgent and that no redress is available in due course. In *Nghiimbwasha and Another v Minister of Justice and Others*¹ the court dealt with the interpretation of the word 'must' contained in rule 73(4) as well as the responsibility of an applicant in a matter alleged to be urgent. Masuku J states at (11) and further:

'The first thing to note is that the said rule is couched in peremptory language regarding what a litigant who wishes to approach the court on urgency must do. That the language employed is mandatory in nature can be deduced from the use of the word "must" in rule 73 (4). In this regard, two requirements are placed on an applicant regarding necessary allegations to be made in the affidavit filed in support of the urgent application. It stands to reason that failure to comply with the mandatory nature of the burden cast may result in the application for the matter to be enrolled on urgency being refused.

[12] The first allegation the applicant must "explicitly" make in the affidavit relates to the circumstances alleged to render the matter urgent. Second, the applicant must "explicitly" state the reasons why it is alleged he or she cannot be granted substantial relief at a hearing in due course. The use of the word "explicitly", in my view is not idle nor an inconsequential addition to the text. It has certainly not been included for decorative purposes. It serves to set out and underscore the level of disclosure that must be made by an applicant in such cases.

¹ *Nghiimbwasha and Another v Minister of Justice and Others* [2015] NAHCMD 67 (A 38/2015; 20 March 2015).

[13] In the English dictionary, the word “explicit” connotes something “stated clearly and in detail, leaving no room for confusion or doubt.” This therefore means that a deponent to an affidavit in which urgency is claimed or alleged, must state the reasons alleged for the urgency “clearly and in detail, leaving no room for confusion or doubt”. This, to my mind, denotes a very high, honest and comprehensive standard of disclosure, which in a sense results in the deponent taking the court fully in his or her confidence; neither hiding nor hoarding any relevant and necessary information relevant to the issue of urgency.’

Conclusion

[10] It is therefore necessary that any founding affidavit in support of an urgent application must contain averments regarding the urgency and why the matter is urgent and also deals with the requirement that no redress is possible in due course. An applicant must explicitly deal with both these requirements in order to pass the first hurdle in bringing an urgent application. The current applicant does not deal with any of these requirements in her founding affidavit save for mentioning that it is an urgent matter brought about by the conduct of the second respondent.

[11] The above reason is sufficient for striking the urgent application from the roll but I would like to comment on another issue in passing. It is also concerning that the applicant seeks relief against Ms Amber Coerecius and Adv. Nekwaya under point 4 of the relief but they were not sited as parties and are therefore not parties of this proceeding and the court cannot make any orders against them. It is further safe to say that Ms Amber Coerecius confirmed that she is not harassed nor is the respondents repressing evidence in her confirmatory affidavit. No affidavit was filed by the applicant from Ms Amber Coerecius confirming the allegations made by her in her founding affidavit.

[12] I therefore make the following order:

1. The urgent application is struck from the roll for a lack of urgency.
2. The costs of the application is awarded to the respondents, to include the costs of one instructed and one instructing legal practitioner.

Judge’s signature

Note to the parties:

<p>E RAKOW Judge</p>	<p>Not applicable</p>
<p>Counsel:</p>	
<p>Applicant:</p>	<p>1 & 2 Respondents:</p>
<p>I Akpabio (In-Person) Windhoek</p>	<p>A Small (with him F Da Silva) Instructed by Office of the Government Attorney, Windhoek</p>