

REPUBLIC OF NAMIBIA



HIGH COURT OF NAMIBIA MAIN DIVISION, WINDHOEK

RULING ON URGENCY

Case Title: Clakho Import and Export and Port Side Marine Services	Applicant Respondent	Case No: HC-MD-CIV-MOT-GEN-2023/00349 Division of Court: High Court, Main Division
Coram: Honourable Justice Coleman	Heard: 11 August. 2023 Delivered: 17 August 2023	
Neutral citation:	<i>Clakho Import and Export v Port Side Marine Services</i> (HC-MD-CIV-MOT-GEN-2023/00349) [2023] NAHCMD 507 (17 August 2023)	
Order:	<ol style="list-style-type: none">1. The application is removed from the roll for lack of urgency.2. The applicant is ordered to pay the respondent's costs of this application, to include one instructing and one instructed counsel.	
Reasons:		

COLEMAN J:

Introduction

[1] This is an urgent application concerning blankets imported through the port of Walvis Bay.

Pertinent facts

[2] The applicant is an, initially unidentified, entity with its primary place of business in Gaborone, Botswana. It only became clear when it filed a replying affidavit that the applicant is actually a company. The respondent is a Namibian close corporation conducting business as clearing agents at the port of Walvis Bay.

[3] Since about 1 April 2023 the respondent started rendering customs clearing and related services to the applicant to assist the applicant with the import of goods through the port of Walvis Bay. For present purposes the history of the dealings between the parties is not relevant.

[4] This application concerns a container with blankets that arrived at the port of Walvis Bay on 20 June 2023. The applicant alleges it is the owner of the blankets. According to the applicant the container went through customs and the respondent then took possession thereof. It apparently also removed the blankets from the container and is now in possession of the blankets at an unknown location. There is a dispute between the parties relating to the ownership of the blankets and the movement of the container and blankets through customs. I am not going into this dispute here.

[5] On 1 August 2023 the applicant filed this application with a notice of motion that does not contain the standard prayer for condonation of non-compliance with the forms and service required in the rules of court due to urgency. A corrected notice of motion was filed later.

[6] The respondent responded with a notice of security for costs in terms of rule 59(1) of the rules of court and filed an elaborate answering affidavit. In its answering affidavit the respondent raised, amongst others, a number of points *in limine*, including commissioning and urgency. For present purposes I will focus on these two points *in limine*.

Conclusion

[7] I considered all the facts and submissions on behalf of the parties and will address only those that I consider relevant for the purposes of my conclusions herein.

[8] My understanding is that the respondent contends that the applicant's founding affidavit is not properly commissioned since it was deposed to in Botswana and rule 128(2) of the rules of court was not complied with. In my view rule 128(3) stipulates that the requirement of rule 128(2) does not apply to an affidavit deposed to in Botswana, amongst other places. From the founding affidavit herein it appears it was commissioned by an Inspector of the Botswana Police Services. I am satisfied the founding affidavit was properly commissioned.

[9] As far as urgency is concerned, rule 73(4) of the rules of court is peremptory. In particular, rule 73(4)(b) requires that in the founding affidavit in an urgent application the applicant must set out explicitly the reasons why it claims it could not be afforded substantial redress at a hearing in due course. This is not dealt with in the founding affidavit. The dispute is about blankets and there is no suggestion before me why substantial redress cannot be addressed in due course. Consequently, the applicant has not made out a case for urgency in this matter.

[10] Accordingly I make the following order:

1. The application is removed from the roll for lack of urgency.
2. The applicant is ordered to pay the respondent's costs of this application, to include one instructing and one instructed counsel.

Judge's Signature	Note to the parties:
	Not applicable.
Counsel:	
Applicant	Respondent
<p>N Halweendo Of Nafimane Halweendo Legal Practitioners, Windhoek</p>	<p>A van Vuuren Instructed by Delport Legal Practitioners, Windhoek</p>