

4. There is no order as to costs.

Following below are the reasons for the above order:

[1] Before this court is an application by notice of motion. Mr Ngoshi, with Legal Aid Directorate's instructions, represents the applicant and Mr Mukondomi represents the respondent. The applicant has applied to the court to hear the matter on the basis that it is urgent, within the meaning of rule 73(4) of the rules of court. The respondent has moved to reject the application on the ground that the matter should not be heard on urgent basis.

[2] The applicant has applied on urgent basis for orders in the following terms:

- (a) That the rental agreement between the parties be enforced.
- (b) That the applicant restores ante omnia to the respondent the respondent's possession and control of the apartment located at Erf No. 3711, UNIT 1, Mandela Court, No. 92 Nelson Mandela Road, Klein Windhoek, Windhoek ('the property').
- (c) That the second respondent delivers to the applicant the keys to the property.
- (d) Costs of suit.

[3] Thus, the applicant has applied on an urgent basis for a spoliation order in respect of the property. It is trite that by its nature mandament van spolie applications are as a general rule to be heard on urgent basis. Even that, to succeed, the applicant must satisfy the two requirements under rule 73(4)(a) and (b) of the rules of court by facts relied on in the applicant's founding papers.

[4] To succeed in obtaining a spoliation order, the authorities are consistent in requiring not merely possession but peaceful and undisturbed possession. In a spoliation proceeding, the court does not decide, apart from possession, what the rights of the parties to the property were before the act of spoliation. The court merely orders that the status quo be restored.¹

¹ *Temptations Fashion CC v J Henning Properties (Proprietary) Limited* [2023] NAHCMD 676 (25 October 2023) para 3.

[5] The applicant, as I have said previously, has applied to the court to hear the matter on urgent basis. It is therefore to the interpretation and application of rule 73(4)(a) and (b) that I now direct the enquiry.

[6] Urgent applications are now governed by rule 73 of the rules of court (ie rule 6(12) of the repealed rules of court), and subrule (4) provides that in every affidavit filed in support of an application under subrule (1) the applicant must set forth explicitly the circumstances which he or she avers render the matter urgent and the reasons why he or she claims he or she could not be afforded substantial redress at a hearing in due course. Indeed, subrule (4) rehearses para (b) of rule 6(12) of the repealed rules. The rule entails two requirements: first, the circumstances relating to urgency which must be explicitly set out, and second, the reasons why an applicant claims he or she could not be afforded substantial redress at a hearing in due course. It is well settled that for an applicant to succeed in persuading the court to grant the indulgence sought, that the matter be heard on the basis of urgency, the applicant must satisfy both requirements.² And *Bergmann v Commercial Bank of Namibia Ltd and Another*³ tells us that where urgency in an application is self-created by the applicant, the court should decline to condone the applicant's non-compliance with the rules or hear the application on the basis of urgency.

[7] I now proceed to consider the facts relied on by the applicant in support of the relief that the matter be heard on urgent basis. It becomes necessary as regards the requirement in rule 73(4)(a) to determine when the applicant claims she was spoliated.

[8] The applicant avers that she took possession of the property on 23 December 2023 as a lessee at the monthly rent of N\$2500. The respondents dispute that she was a lessee. On the papers I do not find any lease contract. I think she was rather a licensee of the property and paying N\$2500 for municipal rates and charges. Be that as it may, that dispute is of no moment in the instant proceedings, as I have pointed out in para 4 above.

[9] On the papers I find that the applicant was spoliated on 11 January 2024, having been in peaceful and undisturbed possession of the property since 23 December 2024. The same day, that is 11 January 2024, she approached the Directorate of Legal Aid (Ministry of Justice) for legal representation. The application was approved on 19 January 2024. The approval was communicated to the appointed legal practitioner on 22 January 2024 and the application was brought on 29 January 2024.

² *Salt and Another v Smith* 1990 NR 87 (HC).

³ *Bergmann v Commercial Bank of Namibia Ltd and Another* 2001 NR 48.

[10] On these facts, I find that the applicant approached the court for relief with speed and promptitude. Consequently, I am satisfied that the applicant has set out explicitly circumstances which render the matter urgent as required by rule 73(4)(a) of the rules of court. I proceed to consider the requirement in rule 73(4)(b) of the rules of court.

[11] I have mentioned previously that spoliation matters are urgent matters. In the instant matter, on the facts, I find that the applicant has set out explicitly reasons why she claims she could not be afforded substantial redress at a hearing in due course, considering the fact that the applicants are out in the cold and at the mercy of the elements, and above all, the period of possession comes to an end on 29 February 2024. Accordingly, I conclude that the applicant has satisfied the requirement under rule 73(4)(b) of the rules of court.

[12] Based on these reasons, I find and hold that the applicant has made out a case for the relief sought. Since the applicant is represented by Legal Aid counsel, there shall be no order as to costs.

Judge's signature:	Note to the parties:
	Not applicable.
Counsel:	
APPLICANT	RESPONDENTS
M K NGOSHI <i>of</i> Mwakondange & Associates Incorporated, Windhoek	L MUKONDOMI <i>of</i> Gaenor Michaels & Associates, Windhoek