

REPUBLIC OF NAMIBIA



IN THE HIGH COURT OF NAMIBIA, NORTHERN LOCAL DIVISION,
OSHAKATI

JUDGMENT

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| Case Title: Willem Nakale v The State | Case No: CC 13/2018 |
| | Division of Court: HIGH COURT (NORTHERN LOCAL DIVISION) |
| Heard before: HONOURABLE MR JUSTICE MUNSU, ACTING JUDGE | Date of hearing: 11 March 2021 |
| | Date of order: 12 March 2021 |
| Neutral citation: <i>Willem vs The State</i> (CC 13/2018) [2021] NAHCNLD 21 (12 March 2021) | |
| Results on merits: Merits not considered. | |
| The order: Having heard Ms Amupolo for the Applicant and Ms Nghiyoonanye for the Respondent , and having read the documents filed of record: | |

IT IS HEREBY ORDERED THAT:

1. The application is not properly before me.
2. The application is removed from the roll.

Reasons for orders:

[1] The rules of the High Court are designed to govern and direct criminal and civil matters alike, unless a certain rule expressly provides otherwise. Rule 73 of the rules of court is designed for urgent matters of any nature; criminal or civil that requires an urgent audience before the High Court. With that said; this matter appears before me in terms of Rule 73 on an urgent basis, seeking the following relief:

- 1.1 Condoning the Applicants non-compliance with the forms and service of this court and hearing this application on an urgent basis as contemplated in rule 73 (3);
- 1.2. Varying the court order dated 1 February 2021 in accordance with rule 103(1) (a) of the rules of this honourable court as far as the applicant is concerned, so that it is ordered that;
- 1.3 The applicant be kept at Ondangwa holding cells pending finalization of his matter or his release on bail;
- 1.4 That the station commander, Ondangwa police Station receive, keep and not interfere with the applicant's detention at Ondangwa police Holding Cells.

[2] This matter was allocated to Justice Salionga on 07 February 2019. It is a criminal part-heard and retains its criminal case number. With the said allocation, Justice Salionga became the managing Judge and is responsible to see the matter to finality. The managing judge be it in a criminal or civil matter will be seized with all interlocutory's which relate to the matter until finalisation or permission is obtained from the Judge President for a different judge to preside over the interlocutory.

[3] Rule 73 (6) reads as follows: The managing judge is responsible for hearing any

interlocutory application lodged with the registrar as an urgent application in a matter which has previously been docket allocated to that managing judge, except that if the managing judge due to absence or a reason to the satisfaction of the Judge-President is not available on the date and time specified in the application, the duty judge or any other judge designated by the Judge-President may hear the urgent interlocutory application. (own emphasis)

[4] Justice Salionga granted the court order of 1 February 2021 and in terms of Rule 73(6) this application is for her audience.

[5] I am therefore of the opinion that the matter is not properly before me and I decline to exercise jurisdiction.

[6] I make the following order:

1. The application is not properly before me.
2. The application is removed from the roll.

| Judge | Note to the parties: |
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| <p style="text-align: center;">D C Munsu Acting Judge</p> | <p style="text-align: center;">Not applicable.</p> |
| Counsel: | |
| Applicant | Respondent |
| <p style="text-align: center;">Ms. M Amupolo of Jacobs Amupolo Lawyers & Conveyancers, Ongwediva</p> | <p style="text-align: center;">Ms. M Nghiyoonyanye of Office of the Prosecutor General, Oshakati</p> |