REPUBLIC OF NAMIBIA NOT REPORTABLE

HIGH COURT OF NAMIBIA MAIN DIVISION, WINDHOEK

EX-TEMPORE JUDGMENT

Case no: A 322/2012

In the matter between:

FRANS GEORGE NAIBAB **APPLICANT**

and

COUNCIL FOR THE MUNICIPALITY OF WINDHOEK **FIRST RESPONDENT**

ANTHONY ABRAHAMS **SECOND RESPONDENT**

Neutral citation: *Naibab v Council for the Municipality of Windhoek* (A 322/2012) [2012] NAHCMD 105 (7 December 2012)

Coram: PARKER AJ

Heard: **7 December 2012**

Delivered: **7 December 2012**

Flynote: Applications and motions – Urgent application – Requirements for – *Salt and Another v Smith* 1990 NR 87 relied on.

Summary: Applications and motions – Urgent application – Requirements for – Interpretation and application of 6(12)(b) by *Salt and Another v Smith* 1990 NR 87 relied on – Court finding that urgency in the application was self-created by the culpable remissness of the applicant – Consequently declining to condone applicant's non-compliance with the rules of court or to hear application as one of urgency.

ORDER

The application is struck from the roll with costs.

JUDGMENT

PARKER AJ:

[1] This application is brought on notice of motion in which the applicant prays for the relief set out in the notice of motion, including the relief that the matter be heard as one of urgency.

[2] Urgent applications are governed by rule 6(12) of the rules of court; and rule 6(12)(b) provides that in every affidavit or petition filed in support of any application under para (a) of subrule (12) 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 that he or she could not be afforded substantial redress at a hearing in due course. The rule entails two requirements: first, the circumstances relating to urgency which must be explicitly set out, and second, the reasons why an applicant could not be afforded substantial redress in due course. See *Salt and Another v Smith* 1990 NR 87. It has also been said that there can be no urgency where the urgency is self-created by the culpable remissness on the part of the applicant. (*Bergman v Commercial Bank of Namibia Ltd and Another* 2001 NR 45).

[3] In the instant case, the applicant was aware as long ago as 10 April 2012 that an eviction order was made by the court by default; and yet he did not bring an application to set it aside. He waits for close to eight months, and then rushes to court to ask the court to hear the application on urgent basis without serving the application on the respondents; and yet he prays this court to eject the first

respondent from the property in question, without the court hearing the first respondent.

[4] Non-service of an urgent application may be condoned if it is shown by the applicant that it is impracticable or unreasonable to serve the application. In the instant case the applicant has not shown that it was unreasonable or impracticable to serve the respondents with papers. As I say, it would be unfair for this court to grant the relief sought and eject the first respondent from the property, when he has not been served with the application and he has not been heard.

[5] The gravamen of the applicant's contention is that the default judgment obtained on 10 April 2012 is being challenged. In our law an order of the court remains valid and enforceable until it is set aside by a competent court, in the instant case by the Supreme Court.

[6] In any case, from the aforegoing, I hold the firm view that urgency in this application is self-created by the culpable remissness on the part of the applicant. This is compounded by the fact that if I granted the relief sought, it would undoubtedly amount to the court sitting on appeal or in review of its own order, ie the 10 April 2012 order; something this court is not empowered to do.

[7] I have considerable sympathy for the applicant but the law and the rules do not support his case, as I have reasoned and concluded previously. I, therefore, decline to condone the applicant's non-compliance with the rules of court and to hear the application as one of urgency; and additionally, it would be unjudicial for this court to grant the relief sought.

[8] In the result, I make the following order:

The application is struck from the roll with costs.

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C Parker

Acting Judge

APPEARANCES

APPLICANT: S Rukoro

Instructed by Murorua & Associates, Windhoek

FIRST RESPONDENT: N Marcus

Of Nixon Marcus Public Law Office, Windhoek