

**REPUBLIC OF NAMIBIA**



**HIGH COURT OF NAMIBIA MAIN DIVISION, WINDHOEK**

**JUDGMENT**

Case No: HC-MD-CIV-MOT-GEN-2023/00409

In the matter between:

**VENA GEMSTONES & MINING (PTY) LTD**

**APPLICANT**

and

**THE MINISTER OF MINES AND ENERGY**

**1<sup>st</sup> RESPONDENT**

**THE COMMISSIONER FOR PETROLEUM AFFAIRS**

**2<sup>nd</sup> RESPONDENT**

**NATIONAL PETROLEUM CORPORATION OF NAMIBIA (PTY) LTD**

**3<sup>rd</sup>**

**RESPONDENT**

**ZAMBEZI EXPLORATION (PTY) LTD**

**4<sup>th</sup> RESPONDENT**

**Neutral citation:** *Vena Gemstones & Mining (Pty) Ltd v The Minister of Mines and Energy* (HC-MD-CIV-MOT-GEN-2023/00409) [2023] NAHCMD 648 (13 October 2023)

**Coram:** USIKU J

**Heard:** 22 September 2023

**Delivered:** 13 October 2023

**Flynote:** Practice – Applications and motions – Urgent application for interim relief – Self-created urgency – Failure by applicant to put forth satisfactory reasons for the delay in bringing interim relief – Application struck from the roll for lack of urgency.

**Summary:** The applicant approached this court on an urgent basis seeking interim relief pending the outcome of its review application that is presently before this court. The applicant was aware from as far back as late June 2022 that its application for petroleum exploration licence in respect of block 2812A was refused by the first respondent and reasons for the refusal were furnished therewith. On 23 May 2023, the applicant sought an undertaking from the first respondent that the latter shall not take any further steps in regard to the allocation of block 2812A. The applicant also indicated that if no undertaking was given by 12h00 on 2 June 2023, applicant shall accept that the first respondent intends to take further steps in regard to the allocation of block 2812A. The first respondent did not give the required undertaking. The applicant brought the urgent application for interim relief, only on 14 September 2023, after applicant saw a post on social media that the first respondent has allocated block 2812A to someone else.

*Held that* the urgency relied upon by the applicant is self-created. The applicant ought to have taken action as soon as it was clear that the undertaking sought was not given. Having accepted, on 2 June 2023, that the first respondent intends to award block 2812A to someone else, the applicant ought not to have waited until it heard that the block was awarded to a third party, before it rushes to court for urgent interim relief.

The matter is struck from the roll for lack of urgency.

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### ORDER

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1. The applicant's application to have the matter heard as one of urgency is hereby refused and the matter is struck from the roll for lack of urgency.
2. I make no order as to costs.

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### JUDGMENT

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USIKU J:

### Introduction

[1] This is an urgent application for an interim interdict pending the outcome of a review application which the applicant has brought against the respondents in case HC-MD-CIV-MOT-REV-2023/00331.

[2] In the present application, the applicant seeks an order interdicting the first and second respondents from signing a petroleum agreement with the fourth respondent and/or from issuing a petroleum exploration licence to the fourth respondent; and if any petroleum licence has been entered into or issued, then such agreement or licence be interdicted from being implemented and executed and be stayed pending the outcome of the review proceeding in case HC-MD-CIV-MOT-REV-2023/00331.

[3] The present application is not opposed. The first and second respondents have indicated that they shall abide by the decision of this court.

### Background

[4] On 22 February 2022, the applicant submitted an application for a petroleum exploration licence with the first respondent in respect to block 2712A and block 2812A, as contemplated under s 11(1)(a) of the Petroleum (Exploration and Production) Act 2 of 1991.

[5] On 15 June 2022, the first respondent notified the applicant that its application could not be considered for both blocks, since multiple applications were received for the same area. The first respondent informed the applicant that its application for exploration licence over block 2712A was successful and invited the applicant to provide certain documents within 30 days.

[6] On 8 February 2023, the applicant addressed a letter to the first respondent requesting reasons why its application in respect of block 2812A was not successful. On 30 June 2023, the first respondent responded, among other things, by referring to

his letter of 15 June 2022 to the effect that he had received multiple applications for the blocks in question and that the allocation of such rights is done in the spirit of the petroleum laws and the developmental policies of Namibia.

[7] Dissatisfied with the reasons furnished for the rejection of its application in respect of block 2812A, the applicant brought an application, on 25 July 2023, seeking the review and setting aside of the decision of the first respondent of 15 June 2022 as confirmed on 30 June 2023. This review application is opposed by the first and second respondents and is pending before this court.

[8] The applicant states that, on 6 September 2023, a LinkedIn post came to its attention indicating that the first respondent has awarded block 2812A to the fourth respondent.

[9] On 7 September 2023, the applicant sent a letter to the first respondent enquiring whether block 2812A has indeed been awarded to the fourth respondent. The first respondent did not respond to this letter.

[10] On 14 September 2023, the applicant brought the present urgent application seeking the relief as set out in paras 1 and 2 hereof.

#### The urgent application

[11] In its application, the applicant submits that the cause of urgency is the LinkedIn post, which appears to indicate that there has been an award of block 2812A to the fourth respondent. The applicant submits further that it has acted with the necessary haste and speed once it became aware on 6 September 2023 that the first respondent may have awarded block 2812A to the fourth respondent.

[12] It is also the applicant's submission that it cannot obtain substantial redress at a hearing in due course if the respondents are not interdicted from taking further steps to implement and execute any agreement that may have been entered into. A review in the ordinary course without an interim interdict, submits the applicant, is not a viable relief or option because the harm that is sought to be prevented would

already have taken place and such review proceedings will be academic and of no effect.

[13] The applicant contends that it intended to pursue an interlocutory interim interdict, relying on the fact that there was at that point no award by the first respondent. The applicant states that the position has changed because the first and second respondents have demonstrated by conduct that they intend to proceed with the award, unless a court order is obtained interdicting them from proceeding as they seek to do.

### Analysis

[14] Rule 73(4) of the rules of this court deals with urgent applications. That rule requires an applicant seeking urgent relief to explicitly set forth the circumstances which render the matter urgent and the reasons why he or she could not be afforded substantial redress at a hearing in due course.

[15] A matter is deemed urgent if it cannot wait to be dealt with in the normal course. In considering whether a matter is urgent or not, each case is considered on its own peculiar facts and circumstances.

[16] The first issue for determination is whether the present application meets the requirements of urgency as contemplated by the rules of this court.

[17] It is a settled principle of law that the existence of circumstances which may be prejudicial to the applicant, is not the only factor to be taken into account, the applicant must also exhibit urgency in the manner in which he has reacted to the event or threats which prompted the urgent application.<sup>1</sup>

[18] From the pleadings and papers filed of record in support of the application, it is apparent that the applicant, through its lawyers, addressed a letter, on 23 May 2023, to the first respondent seeking an undertaking that the latter shall not take any steps relating to block 2812A which may be prejudicial to the applicant's rights, pending the finalization of the then intended review application, which the applicant intended to

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<sup>1</sup> *Gwarada v Johnson* 2009 (2) ZLR 159.

lodge by 2 June 2023. In that letter, the applicant requested that the undertaking be given not later than 12h00 on 2 June 2023, failing which the applicant shall accept that the first respondent intends to prejudice its rights prior to the finalisation of the intended review application. In the same letter, applicant's lawyers indicated that, in the event of the failure to give the requested undertaking, they are instructed to bring an interim interdict pending the finalisation of the review application.

[19] The first respondent did not give any undertaking by 12h00 on 2 June 2023, and did not at any other stage give such undertaking. From the content of the foregoing letter, the applicant must therefore, have accepted, as from 2 June 2023, that the first respondent intends to prejudice its rights prior to the finalisation of the intended review application.

[20] By letter dated 30 June 2023, the first respondent acknowledged receipt of the applicant's letter dated 23 May 2023 and repeated the reason for not granting block 2812A to the applicant as earlier notified in the letter dated 15 June 2022. The first respondent did not respond to the request for an undertaking.

[21] On 27 July 2023, the applicant's lawyers addressed a letter to the lawyers of the first respondent, stating among other things that the applicant intends to institute an interim interdict pending the outcome of the review application, which was by then launched on 25 July 2023. In this letter, the applicant proposed that the parties meet, as contemplated in terms of rule 32(9) of the rules of this court, and that such meeting takes place on 31 July 2023.

[22] On 7 September 2023, the applicant's lawyers addressed a letter to the first respondent, stating, among other things, that the applicant has received a post on social media suggesting that block 2812A was awarded to the fourth respondent. The applicant's lawyers requested the first respondent to confirm whether same is true and demanded an undertaking, not later than 8 September 2023, that the first respondent shall not execute or implement any action on block 2812A pending the outcome of the review application, failing which the applicant shall approach this court on an urgent basis.

[23] Having not received the required confirmation or the undertaking, the applicant then brought the present urgent application for interim relief on 14 September 2023.

[24] The question is then whether this matter should be treated as urgent and whether the applicant should be allowed to jump the queue and have its matter heard before other cases that were launched earlier. In my view, the answer is in the negative. The applicant, by the content of its letter dated 23 May 2023, has accepted as from 2 June 2023 that the first respondent intended to prejudice its rights prior to the finalisation of the review application. The applicant did not spring to action and seek the required relief soon after 12h00 on 2 June 2023 or immediately thereafter. The stance taken by the applicant in these circumstances is certainly not one which give the impression that applicant regarded its matter as urgent.

[25] In my view, on the facts of the present matter, the applicant did not need to wait until it received the LinkedIn post, in order to act. The applicant was aware of its right to seek the required relief as at 23 May 2023. As at that date, it has indicated that if the required undertaking was not given, the applicant has instructed its lawyers to bring an interim interdict pending the finalisation of the review application. There is no acceptable explanation why such an application was not brought soon after 2 June 2023.

[26] I am of the opinion that the applicant did not treat its matter as urgent warranting preferential treatment. The urgency claimed by the applicant is self-created. The applicant should therefore, not be allowed to jump the queue and have its matter given preference over other pending matters. The applicant's application, therefore, stands to be struck from the roll for lack of urgency.

[27] As regards the issue of costs, the application is unopposed. I shall, therefore, not grant any costs order.

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

1. The applicant's application to have the matter heard as one of urgency is hereby refused and the matter is struck from the roll for lack of urgency.

2. I make no order as to costs.

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B USIKU  
Judge

APPEARANCES:

APPLICANT: J Diedericks  
Instructed by Sisa Namandje & Co. Inc., Windhoek

1<sup>st</sup> & 2<sup>nd</sup>

RESPONDENTS: L Tibinyane  
Of Office of the Government Attorney, Windhoek