



**IN THE HIGH COURT OF SOUTH AFRICA,
GAUTENG DIVISION, JOHANNESBURG**

CASE NO: 2020/10012

(1) REPORTABLE: NO
(2) OF INTEREST TO OTHER JUDGES: NO

DATE
SIGNATURE

In the application by

AFRICAN OXYGEN LIMITED

Applicant

and

**MECS CONTRACT FILLING AND MANUFACTURING
SEBENZA (PTY) LTD**

Respondent

JUDGMENT

MOORCROFT AJ:

Summary

*Respondent seeks the indulgence to oppose application – application postponed –
Respondent to pay opposed costs on attorney and own client scale*

Order

[1] In this matter I make the following order:

1. *The application is postponed to 10 October 2023;*
2. *The respondent is ordered to file its answering affidavits before or on 5 September 2023;*
3. *The applicant is ordered to file its replying affidavits on or before 12 September 2023;*
4. *The parties are ordered to file heads of argument and practice notes by no later than 25 September 2023;*
5. *The respondent is ordered to pay the wasted costs of the postponement on the opposed scale as between attorney and own client.*

[2] The reasons for the order follow below.

Introduction

[3] The parties entered into a signed settlement agreement of a trial action on 3 November 2022. In terms of the agreement the respondent undertook to make payment of monthly instalments of R100,000 from 30 November 2022 onwards towards payment of an agreed debt of R1,900,000 together with interest at 10.5% per annum and a contribution towards costs of R50,000 payable by 17 November 2022 . In the event of non-payment the full amount sued for in the summons would become payable and the respondent admitted liability for R 3,276,333.67, and further interest at a rate 5% above the prime rate of First National Bank from 22 November 2022 until date of payment.

[4] The applicant alleges in the founding affidavit that only the R50,000 contribution towards legal costs was paid. No other payments have been made by the respondent.

[5] The present the application was served on the respondent's attorneys of record on 1 June 2023. The application was not opposed and on 17 July 2022 the applicant's attorneys served the notice of set-down on the respondent's attorneys. The set down date was 22 August 2023. On 25 July 2023 the respondent's attorneys withdrew as attorneys of record. On 18 August 2023 the respondent's new attorneys came on record and gave notice of an intention to oppose the application. Correspondence ensued between the attorneys and the applicant's attorneys refused to agree to a postponement of the matter and insisted that the respondent's attorneys bring a substantive application for condonation and a postponement on 22 August 2023.

[6] Mr Baloyi was briefed to apply from the bar for the indulgence of a postponement.

[7] The respondent failed to apply for condonation and for a postponement.

[8] Having considered the matter and having regard to paragraph 9.9.9.4 of the Practice Manual of 2018 I make the order set out in paragraph one above.

J MOORCROFT
ACTING JUDGE OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION
JOHANNESBURG

Electronically submitted

Delivered: This judgement was prepared and authored by the Acting Judge whose name is reflected and is handed down electronically by circulation to the Parties / their legal representatives by email and by uploading it to the electronic file of this matter on CaseLines. The date of the judgment is deemed to be **24 AUGUST 2023**.

COUNSEL FOR THE APPLICANT: K REDDY
INSTRUCTED BY: SIVUYILE MAQUNGO INC
COUNSEL FOR THE RESPONDENT: M BALOYI

INSTRUCTED BY:

MASHABANE & ASSOCIATES

DATE OF ARGUMENT:

22 AUGUST 2023

DATE OF JUDGMENT:

24 AUGUST 2023