
JUDGMENT

Van der Schyff J

- [1] The applicant (RAF) approached the urgent court for an order to the effect that all writs of execution and warrants of attachments against the Road Accident Fund based on court orders already granted or settlements already entered into in favour of Newnet Properties (Pty) Ltd t/a Sunshine Hospital (Newnet) be immediately suspended, and that the RAF be ordered to make payment of R45 581 098.50 on the 20th of each consecutive months to Newnet until Newnet has been paid in full for all proven valid, verified claims against the RAF. In addition, RAF sought Newnet to be interdicted, prohibited, and restrained from issuing any writ of execution or taking any steps on any warrant of attachment against RAF's assets for as long as the RAF complies with the order.
- [2] The application was initially set down to be heard in the urgent court on 25 July 2023. It was removed from the roll on 20 July 2023. A notice of set down was filed on 3 August 2023, setting the matter down for 8 August 2023. However, an application for postponement was filed in the early hours of 8 August 2023.
- [3] The application for postponement was moved when the matter was called. After considering the application for postponement, I dismissed it and indicated that I would provide the reasons for dismissing the postponement application in writing.

Postponement application

- [4] It is trite that the postponement of a matter set down for hearing on a particular date, and even more so when the application is set down for hearing in the urgent court, cannot be claimed as a right. An applicant seeking the postponement of an application seeks an indulgence from the court. The Constitutional Court held in

Lekolwane and Another v Minister of Justice and Constitutional Development,¹ that a postponement will not be granted unless the court is satisfied that it is in the interests of justice to do so.

- [5] In considering the application for postponement, I had regard to whether any exceptional circumstances exist to allow the postponement, whether the explanation for the postponement was comprehensive and satisfactory, in short, whether the applicant showed good cause in the application for postponement. The prejudice suffered by either party is but one of the factors to consider when the court exercises its discretion to grant or refuse the application.
- [6] The affidavit filed in support of the application for postponement is dismally lacking in all regards. Not only does the deponent not have any personal knowledge of the facts that motivated the RAF to seek a postponement, the facts underpinning the application are not provided. Save for the vague averments that the RAF 'wish to provide new evidence in support of its application' and that it is the deponent to the affidavit's instructions that 'the new evidence is extensive, and extremely relevant to the issues between the applicant and the [first] respondent' and 'strikes at the heart of the disputes between the parties and that there would be a miscarriage of justice if the issues were decided without such further evidence being before court', the court and Newnet is entirely left in the dark. No explanation was provided as to what the alleged new matter entails or why it was only uncovered now.

Main application

- [7] After the application for postponement was dismissed, counsel for the RAF indicated that they had no instructions to proceed with the application and asked to be excused from the proceedings.

¹ 2007 (3) BCLR 280 (CC).

- [8] Newnet's counsel subsequently sought that the main application be dismissed with punitive costs. I saw no reason not to consider the application merely because of the RAF's deliberate decision to absent itself from the proceedings.
- [9] The papers filed of record as it stands informs that all amounts due by the RAF to Newnet originate from services rendered by Newnet to patients who suffered injuries in motor vehicle collisions.
- [10] I agree with Newnet that the relief sought by the RAF in this application is not legally competent. Not only is this court effectively requested to suspend the execution of orders handed down on unknown dates by unknown courts, but this court is also requested to suspend the execution of orders that still stand to be handed down. Orders granted by competent courts underpin Newnet's claims. There is no explanation in the papers that these judgments stand to be rescinded. The RAF proffers no reasons to doubt or question the validity of existing court orders. The RAF does not deny that it owns the amounts in question to Newnet. No legal basis was put forward for this court to find that the RAF's financial inability to comply with court orders provides RAF with a *prima facie* right to have the operation of writs suspended.
- [11] Rule 45A is not designed to create a moratorium for an unsuccessful party to render orders ineffective, and the relief provided for through this rule ought to be exercised in exceptional cases only. Harms² is of the view that it is doubtful if this rule could ever be applied in the case of orders sounding in money unless an appeal is in the offing.
- [12] Newnet provides a service to members of the public who were injured in motor vehicle collisions and are unable to obtain medical services at state hospitals. The services rendered by Newnet are also in the public interest. Newnet cannot be expected to carry the brunt of the RAF's failed financial state.

² Harms, B. *Civil Procedure in the Superior Courts*. LexisNexis February 2023-S1-76, B45A.3.

[13] I cannot disregard the fact that Newnet unequivocally states that it is willing to engage with the RAF to assist the RAF, but that it needs clarity and certainty when it commits to an agreement that amounts due and payable to it be paid in monthly instalments.

Costs

[14] It is trite that to award costs on a punitive scale is an extraordinary measure that should be applied only in exceptional circumstances.³ The RAF's conduct in this application, however, justifies granting a punitive costs order. For reasons I fail to fathom, the RAF seems to regard itself as an entitled litigant who can approach the court on an urgent basis whenever it deems fit and simultaneously disrespect the court and the court procedures by not participating in litigation initiated by itself. The RAF has previously been described as a recalcitrant litigant, and this position seems not to have changed.

ORDER

In the result, the following order is granted:

- 1. The application is dismissed with costs on the scale as between attorney and client inclusive of the costs of two counsel.**

E van der Schyff
Judge of the High Court

³ See e.g., *Public Protector v South African Reserve Bank* 2019 (6) SA 253 (CC).

Delivered: This judgement is handed down electronically by uploading it to the electronic file of this matter on CaseLines. As a courtesy gesture, it will be emailed to the parties/their legal representatives.

For the applicant:	Adv. M.M. RIP SC
With:	Adv. R. Schoeman
Instructed by:	Malatji & Co
For the first respondent:	Adv. J.G. Marais SC
With:	Adv. M. van Rooyen
Instructed by:	Podbielski Mhlambi Inc.
Date of the hearing:	8 August 2023
Date of judgment:	8 August 2023