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| Reportable: | YES / NO |
| Circulate to Judges: | YES / NO |
| Circulate to Regional Magistrates: | YES / NO |
| Circulate to Magistrates: | YES / NO |

IN THE HIGH COURT OF SOUTH AFRICA
(NORTHERN CAPE DIVISION, KIMBERLEY)

Case Number: 828/2019
Date Heard: 11/03/2024
Date Delivered: 12/03/2024

In the application of:

**THE MEC: DEPARTMENT OF AGRICULTURE,
LAND REFORM AND RURAL DEVELOPMENT:
NORTHERN CAPE**

APPLICANT

and

CIVIL TECH CONSTRUCTION CC

RESPONDENT

IN RE:

CIVIL TECH CONSTRUCTION CC

PLAINTIFF

AND

**THE MEC: DEPARTMENT OF AGRICULTURE,
LAND REFORM AND RURAL DEVELOPMENT:
NORTHERN CAPE**

DEFENDANT

Coram: Tyuthuza AJ

JUDGMENT ON APPLICATION FOR POSTPONEMENT

Tyuthuza AJ

INTRODUCTION

1. The present trial proceedings served before me as an action by the plaintiff for payment of the sum of R31,804,375.51 for services rendered during 2010 and 2011 pursuant to an agreement with the defendant. The defendant has to date failed to pay and disputes that the plaintiff had the necessary approval or consent as provided for in the Conservation of Agricultural Resource Act 43 of 1983.
2. Pursuant to the parties obtaining a trial ready certificate, the matter was set down for 11 March 2024 to 13 March 2024.

APPLICATION FOR POSTPONEMENT

3. On the date of the hearing, the applicant launched a substantive application for postponement. I stood the matter down for the respondent to file its answering affidavit, after it had indicated that it would oppose the application for postponement.
4. The respondent delivered its answering affidavit on 11 of March 2024 and the applicant chose not to file a replying affidavit.
5. The application for postponement is premised on the applicant's unpreparedness to proceed with trial as the applicant's attorneys only received instructions on 6 March 2024.
6. Adv Motselebane, for the applicant, contends that the application is *bona fide* and that the applicant will suffer more prejudice than the respondent if the application is not granted because the matter is complicated and has huge financial implications for the applicant. She further contends that the

applicant has attempted to resolve the matter internally and has attempted to drive the legal process.

7. Adv Knoetze SC, for the respondent, contends that this application for postponement is demonstrative of the applicant's lack of seriousness in finalising the matter. He further contends that the applicant has failed to take the Court into its confidence by not proffering reasons for the state attorney withdrawal. He submitted that there is no merit in the application for postponement and that it must be dismissed with costs.
8. It is clear from the papers filed in this application that the applicant has:
 - 8.1. Waited until the eleventh hour to file its application for postponement, after having intimated in June 2023 that they are ready to proceed with the matter.
 - 8.2. Waited until the eleventh hour to appoint legal representatives after having intimated in June 2023 that it would appoint attorneys.
 - 8.3. Failed to disclose all the facts leading up to this application.
9. Of significance is the fact that the applicant was aware of the trial date since August 2023 but, despite numerous correspondence from the respondent's attorney in February 2024 indicating that the trial would proceed from 11 to 13 March 2024, the applicant did nothing. Having regard to the applicants conduct, I find that it is solely to blame for its unpreparedness.

BACKGROUND

The background succinctly in relation to this application is the following:

10. On 24 March 2023 the parties convened a pre-trial conference before Nxumalo J. The pre-trial minutes were signed on 13 June 2023, wherein it was agreed that the matter is ready to proceed to trial and that the applicant agreed that it would make a decision on whether it would appoint attorneys. On 4 July 2023 a certificate of trial readiness was issued. The application for

a trial date was made during July 2023, whereafter the Registrar of this Court allocated a trial dates of 11 to 13 March 2024. Due notice of this trial date was given to the applicant in August 2023.

11. It is common cause that the applicant's erstwhile attorneys, the State Attorney, had withdrawn on 3 June 2020 and that the applicant has been unrepresented since.
12. On 5 March 2024, the applicant appointed Mosikare attorneys to represent it and filed its notice of appointment on 7 March 2024. Upon an enquiry from the court on 7 March 2024, the applicant's attorney advised that it would not be ready to proceed with the trial and would approach the respondent's attorneys for future dates.
13. On 7 March 2024 the applicant's attorneys contacted the respondent's attorneys requesting the trial bundle. On 8 March 2024, the applicant's attorney advised the respondent's attorneys that the applicant would not be ready to proceed with trial on 11 March 2024, and requested a postponement of the matter and also tendered the wasted costs.
14. The respondent indicated that it is opposed to the postponement of the matter and is ready to proceed.

LAW

15. It is trite that the party seeking postponement must proffer good and strong reasons therefor and that the applicant must give a full and satisfactory explanation of the circumstances that gave rise to the application¹. The application itself must be *bona fide* and must not be used as a tactical endeavour to obtain an advantage to which the applicant is not entitled.
16. Factors that need to be taken into account in an application for a postponement are set out by the Constitutional Court in *National Police*

¹ See *National Police Service Union* (note 2 above) at 1112 C-F; *Shilubana and Others v Nwamitwa* (National Movement of Rural Women and Commission for Gender Equality as Amicus Curiae) [2007] ZACC 14; 2007 (5) SA 620 (CC) at 624B-C;

*Service Union and Others v Minister of Safety and Security and Others*²
where Makgoro J said:

'The postponement of a matter set down for hearing on a particular date cannot be claimed as of right. An applicant for a postponement seeks an indulgence from the Court. Such postponement will not be granted unless this Court is satisfied that it is in the interests of justice to do so. In this respect the applicant must show that there is good cause for the postponement. In order to satisfy the Court that good cause does exist, it will be necessary to furnish a full and satisfactory explanation of the circumstances that give rise to the application. Whether a postponement will be granted is therefore in the discretion of the Court and cannot be secured by mere agreement between the parties. In exercising that discretion, this Court will take into account a number of factors, including (but not limited to): whether the application has been timeously made, whether the explanation given by the applicant for postponement is full and satisfactory, whether there is prejudice to any of the parties and whether the application is opposed.'

17. The Constitutional Court has also held that the interests of justice is determined not only by what is in the interests of the immediate parties, but also by what is in the broader public interest.³
18. A postponement is usually accompanied by wasted costs which the court is called upon to award to one of the parties. The award is a matter wholly within the discretion of the court, but it is a judicial discretion which must be exercised on grounds upon which a reasonable person could have come to the conclusion arrived at.
19. In considering the court's discretion, it was held in *Fripp v Gibbon & Co*⁴ that:

"the law contemplates that [the Judge] should take into consideration the circumstances of each case, carefully weighing the various issues in the case, the conduct of the parties and any other circumstance which may have a bearing upon the question of costs, and then make such order as to costs as would be fair and just between the parties."

ANALYSIS

² National Police Services Union and Others v Minister of Safety and Security and Others (CCT21/00) [2000] ZACC 15; 2000 (4) SA 1110 ; 2001 (8) BCLR 775 (CC) (27 September 2000)

³ Psychological Society of South Africa v Qwelane and Others (CCT226/16) [2016] ZACC 48; 2017 (8) BCLR 1039 (CC) (14 December 2016)

⁴ 1913 AD 354 at 363.

20. The respondent's answering in the application for postponement sets out detailed averments illustrating that various correspondence was addressed to the applicant's legal advisor regarding the trial and it is clear that the respondent's attorney of record went to substantial lengths to ensure that the applicant was aware that the respondent would be ready to proceed with trial.
21. There is no explanation why the applicant has not prosecuted this matter to finality in almost seven years and yet it still seeks a further indulgence "*for further time to be able to present its case.*"
22. As alluded to above, an application for postponement must be made *bona fide*. It must have a specific objective in mind, and it must give due consideration for competing role-players that co-exist within the interests of justice. *Bona fides* is analogous to good faith. I have no basis to doubt the *bona fides* of the application for the postponement. The applicant's counsel indicated in open court, candidly and on record that the applicant's case would not be presented properly in light of the combined experience of the applicant's representatives. It is clear that the applicant will be unable to proceed with trial without proper and adequate preparation if the application for the postponement is dismissed.
23. In light of the fact that the parties are unable to reach a settlement, the merits and quantum of this matter will have to be fully ventilated for a well-informed decision to be reached. I am of the view that the application for postponement was made with a *bona fide* intention, even if it's argued that the application was not made timeously, I am of the view that the fairness and interests of justice justify a postponement of the matter. Given the circumstances of this case, justice demands that the applicant cautiously be given time for the purpose of presenting its case.
24. The applicant's tardiness with actively pursuing the matter and preparing for the trial is relevant in determining the costs. The respondent was ready to proceed with trial and finalise the hearing, despite the applicant having been

aware of the trial date in August 2023. In the circumstances the respondent is entitled to be compensated for wasted costs.

25. As a result, I make the following order:

- (a) The trial which was set down for 11 to 13 March 2024 is postponed to 21 to 24 May 2024;
- (b) The applicant is ordered to pay the wasted costs occasioned by the postponement, including the costs of two counsel as well as the reservation fees of both senior and junior counsel for trial.

T TYUTHUZA AJ
ACTING JUDGE

APPEARANCES:

On behalf of the Applicant:
On the instruction of:

Adv. K. Motselebane
Mosikare Attorneys

On behalf of the Respondent:
On the instruction of:

Adv. B. Knoetze SC & Adv J.G. Gilliland
Haarhoffs Inc.