

CONSTITUTIONAL COURT OF SOUTH AFRICA

Case CCT 21/00

NATIONAL POLICE SERVICE UNION

First Appellant

OWEN YIMANI ZAMA

Second Appellant

SIMANGALISO GODFREY MDLULI

Third Appellant

versus

THE MINISTER OF SAFETY AND SECURITY

First Respondent

THE NATIONAL COMMISSIONER OF THE
SOUTH AFRICAN POLICE SERVICE

Second Respondent

THE PROVINCIAL COMMISSIONER OF THE
SOUTH AFRICAN POLICE SERVICE FOR
KWAZULU-NATAL

Third Respondent

BONITAS MEDICAL FUND

Fourth Respondent

Heard on : 24 August 2000

Decided on : 24 August 2000

Reasons furnished on : 27 September 2000

JUDGMENT

MOKGORO J:

[1] When this appeal was called for hearing on 24 August 2000, an application for its postponement by the appellants was refused. The appeal was struck from the roll and no order

was made as to costs. It was intimated that reasons for the refusal would be furnished later. These are the reasons for such order.

[2] The application had been lodged with the Court the previous day. No legal representative for the respondents appeared, apparently because the parties had agreed that the matter would not be opposed and that the appellants would pay certain of the respondents' costs. Both parties seemed to have assumed that the postponement would be granted on the basis of their agreement. After the application was refused, counsel for the appellants withdrew.

[3] The appellants' reason for seeking the postponement was that they were not ready to proceed. The explanation for this unpreparedness lay in a dispute between the appellants and one of their attorneys, Dehal Incorporated (Dehal). On the appellants' version, the dispute concerned, amongst other things, their dissatisfaction with Dehal's work, their unhappiness about the counsel selected by them, a lack of consultation between Dehal and second appellant's original attorneys, Nompumelelo Radebe & Company (Radebe), and the fees charged by Dehal. The disagreement came to a head two days before the hearing when, according to the second appellant, Dehal's instructions, were withdrawn. In the result, counsel for the appellants who had been instructed the previous day, was not in a position to proceed with the appeal, because he had not been instructed to do so.

[4] The Constitutional Court has the inherent power to protect and regulate its own process.¹ The postponement of a matter set down for hearing on a particular date cannot be claimed as of

¹ Section 173 of the Constitution of the Republic of South Africa, 1996.

right.² 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,³ whether there is prejudice to any of the parties and whether the application is opposed. All these factors will be weighed by the Court to determine whether it is in the interests of justice to grant the postponement.

² *National Coalition for Gay and Lesbian Equality and Others v Minister of Home Affairs and Others* 1999 (3) SA 173 (C) at 181D; 1999 (3) BCLR 280 (C), see also *Carephone (Pty) Ltd v Marcus NO and Others* 1999 (3) SA 304 (LAC) at para 54.

³ *Madnitsky v Rosenberg* 1949 (2) SA 392 (A) at 399. For the application of the test for sufficient explanation in the context of condonation see *Moraliswani v Mamili* 1989 (4) SA 1 (A) at 8H - I.

[5] What is in the interests of justice will in turn be determined not only by what is in the interests of the parties themselves, but also by what, in the opinion of the Court, is in the public interest. The interests of justice may require that a litigant be granted more time, but account will also be taken of the need to have matters before this Court finalised without undue delay.

[6] Heads of argument were filed timeously by both parties and the matter was ripe for hearing. Dehal withdrew on 2 August 2000; the notice of withdrawal was purportedly sent by hand to Radebe and to the first appellant on that day; it is on record that this notice was sent to second appellant by registered post; Radebe remained on record as the appellants' attorneys throughout. There is nothing on the record to show that the appellants did not know of Dehal's withdrawal and if not, why that was not known. If the withdrawal was known, there is no information as to what was done between 2 August and the date fixed for hearing, to ensure that counsel was instructed timeously, nor is there anything to indicate why the matter could not be argued when appellants' detailed heads of argument had already been filed with this Court. In the circumstances, the appellants had not furnished enough information to establish good cause for the postponement or to show that the postponement was in the interests of justice. For these reasons, we did not accede to the request for postponement.

[7] It is necessary to emphasise that a postponement will not be granted simply because the parties agree to it. Ordinarily therefore, if an application for a postponement is to be made on the day of the hearing of a case, the legal representatives for the opposing party *must* appear and be ready to assist the Court both in regard to the application for the postponement itself and if the application is refused, the consequences that would follow.

[8] Finally, it must be said that the fact that the matter has been struck from the roll does not mean that the doors are completely shut to the appellants. They may make an application for the reinstatement of the appeal. In that event they will be required to show good cause and furnish a full explanation, not only as to why they could not proceed with the matter on 24 August 2000, but also in relation to any lapse of time between this date and the date of the application for reinstatement. The prospects of success in the appeal will be an important factor to be taken into account when any reinstatement application is considered.

Chaskalson P, Langa DP, Ackermann J, Goldstone J, Kriegler J, Ngcobo J, O'Regan J, Sachs J, Yacoob J and Madlanga AJ concur in the reasons of Mokgoro J.

For the appellant: Tjaart van der Walt instructed by Nompumelelo Radebe and Company and Du Plessis and Associates.

For the respondents: No appearance.