

REPUBLIC OF SOUTH AFRICA
IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG LOCAL DIVISION, JOHANNESBURG

CASE NO: 09248/2020

REPORTABLE: NO
OF INTEREST TO OTHER JUDGES: NO
REVISED: YES
9/03/2022

In the matter between :

AFRIKA A MINA ENGINEERING CC

Applicant

and

MORWANA BERNARD MAGABE

1st Respondent

Identity number: [...]

MAMA JOSEPHINE MAGABE

2nd Respondent

Identity number: [...]

JUDGMENT ON POSTPONEMENT APPLICATION

STRYDOM J:

[1] Before this court the first respondent as applicant (the first respondent) brought an application, on notice with a supporting affidavit, referred to by him as an application for the stay of provisional sequestration proceedings pending acquisition of legal representation.

[2] In effect, it is a postponement application. The matter was previously on the opposed roll of 24 January 2022 when an application was similarly made for the postponement of this application.

[3] The court was informed from the bar, and it became common cause, that the ground for this postponement application was also for the first respondent to obtain legal representation.

[4] First respondent in his affidavit in support of this application avers that since the previous hearing he did two things:

4.1 He asked Werksmans Attorney's to act for him *pro bono* but they were not interested to act on this basis.

4.2 He then on 8 February 2022 appointed Mashele Attorneys to act *pro bono* on his behalf.

[5] The first respondent informed the court that Mashele Attorneys previously worked with him in one of his companies but he is now in private practice.

[6] Mr Mashele filed a notice of appearance but on or about 5 March 2022 he filed a notice of withdrawal as attorney of record.

[7] First respondent informed the court that his financial circumstances recently has changed, as he got involved in a new business ventures. He can now afford legal representation.

[8] He argued that he has a constitutional right to a fair hearing which would entail the right to legal representation.

[9] He stated that he will be ready to proceed on the next occasion if this matter now gets postponed.

[10] Mr Daniels appearing for the applicant in the main application indicated that this matter comes a long way and that it will be in the interest of the applicant to proceed with the application at this stage. The same reasons for a postponement was advanced at the previous hearing.

[11] The respondent's application is not convincing, particularly pertaining to the position of Mr. Mashele whom he previously worked with, coming on board as attorney of record just to withdraw again.

[12] Further, a cursory consideration of the possible defences of first respondent reveals that it is unlikely that a successful defence can be raised in the sequestration application. First respondent averred that he now has funding available to obtain legal representation. This allegation militates against his defence that it would not be to the advantage of creditors to sequester his estate.

[13] Having said that, it is in my view that the first respondent should get a final opportunity to file an answering affidavit and oppose the application. In my view, the application should not thereafter be postponed again for the reason that the first respondent wants to obtain legal representation, unless exceptional circumstances are shown. I intend to have this judgment transcribed to be available to the Judge hearing this application. My registrar has contacted the opposed motion division to enquire about available dates. The first available date was provided and is 25 April 2022. I intend postponing this application to 25 April 2022 but will determine dates for the filing of an answering affidavit, a replying affidavit and heads of argument. Importantly, the applicant should before Friday, 11 March 2022 approach the registrar who is dealing with opposed motions to set the matter down for hearing.

[14] The following order is made:

14.1 The matter is removed from the roll;

14.2 The matter is to be set down for hearing on the opposed roll for 25 April 2022;

14.3 The first respondent should file his answering affidavit on or before 22 March 2022;

14.4 The applicant should file its replying affidavit, if any, on or before 4 April 2022;

14.5 The first respondent should file heads of argument on or before 14 April 2022;

14.6 Unless the applicant and second respondent elect to file further heads of argument no further heads of argument need to be filed by these parties;

14.7 The first respondent is ordered to pay the wasted costs occasioned by this postponement, which will include the costs of the second respondent.

RÉAN STRYDOM
JUDGE OF THE HIGH COURT
GAUTENG LOCAL DIVISION OF THE HIGH COURT
JOHANNESBURG

Date of Hearing: 09 March 2022

Date of Judgment: 09 March 2022

APPEARANCES

For the Applicant: Adv. AJ Daniels SC

Instructed by: Ritcher Attorneys

For the 1st Respondent: In Person

For the 2nd Respondent: Adv. G. Meyer

Instructed by:

AJ Van Rensburg Incorporated