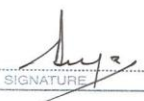


IN THE NORTH GAUTENG HIGH COURT, PRETORIA
(REPUBLIC OF SOUTH AFRICA)

DELETE WHICHEVER IS NOT APPLICABLE	
(1) REPORTABLE: YES/NO.	
(2) OF INTEREST TO OTHER JUDGES: YES/NO.	
(3) REVISED.	
01.03.10	 SIGNATURE
DATE	SIGNATURE

05/03/2010.
CASE NO: 33711/02

In re:

**TEANONG PETROL FILLING & SERVICE
 STATION CC**

1st Applicant

**DHLADHLA, ZETHENBE DAN
 DHLADHLA, SIPHO
 DHLADHLA, VUSI**

2nd Applicant
 3rd Applicant
 4th Applicant

And

B P SOUTHERN AFRICA (PTY) LTD

Respondent

In the matter between:

BP SOUTHERN AFRICA (PTY) LTD

Plaintiff

And

**TEANONG PETROL FILLING & SERVICE
 STATION CC**

1ST Defendant

**DHLADHLA, ZETHENBE DAN
 DHLADHLA, SIPHO
 DHLADHLA, VUSI**

2ND Defendant
 3rd Defendant
 4th Defendant

JUDGEMENT

SAPIRE, A J:

This is an action which was set down for hearing on the 18th of February 2010. At the calling of the roll the Defendant presented an application for relief including a postponement of the trial action sine die with costs to be reserved for determination by the trial court. The matter was then referred to me and argued at some length by the parties.

The Notice of Motion in addition to prayer 2, the prayer for a postponement, contains two other prayers. The first prayer is for an order directing the Plaintiff to deliver an Affidavit in response to the Applicant's Notice in terms of Rule 35(3) dated the 1st of February 2010 and to comply with Rule 35(6) within 10 days of the order. This relief the Defendant seeks with an order that the Plaintiff is to pay the costs of this component of the application. The third prayer is one that the Plaintiff's claim against the Second to Fourth Defendants and ordering the Plaintiff to pay their costs of the trial action and this component of the application on the scale as between attorney and own client.

As far as the prayers other than that for a postponement are concerned, they appear to be unwarranted and insubstantial and included merely as makeweight. . The Defendants Notice in terms of Rule 35(3) was served at a late stage and the Plaintiff was not required to make discovery as requested therein and before the date for hearing of the trial. In any event the documents which the Defendants claim have not been discovered are the Plaintiff's bank statements.

I am not satisfied that the bank statements should have been considered discoverable by Plaintiff. If Defendants wish to prove payment for the materials which were delivered they should have documentary proof in their possession and their own records of the transactions in respect of which payment was made.

That the Notice was not timeously given is attributable to the nonchalant manner in which the Defendants have prepared or rather not prepared for the trial of this matter. Nonchalance and lack of attention appear from the Affidavit upon which the Defendants base the application. The Defendants' attorney before the trial had withdrawn and refused to act on the Defendants' behalf in the absence of the payment of a substantial deposit. This is referred to in the Affidavit. Only at a late stage the Defendants found the necessary finance to proceed with their defence and briefed counsel at the last moment when significant preparation was not possible.. Realistically from the Plaintiff's point of view its bank statements play no part in the advancement of any party's case.

It is not surprising that the application for a postponement was only made after counsel had been briefed. The Affidavit was signed one day before the trial date and the Notice of Motion was signed on the date of trial.

I am convinced that if the Defendants had taken preparation for trial with due diligence the postponement would not have been necessary.

ORDER:

The Defendants must pay the Plaintiff's wasted costs occasioned by the postponement

No order is made regarding prayers 1 and 3.


SAPIRE AJ

ATTORNEYS FOR THE PLAINTIFF:

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c/o EDELSTEIN-BOSMAN INC

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New Muckleneuk

PRETORIA

Ref: Mr N van den Heever/R/BS001532

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COUNSEL FOR THE RESPONDENT: R J GROENEWALD