

**IN THE HIGH COURT OF SOUTH AFRICA
(EASTERN CAPE LOCAL DIVISION, PORT ELIZABETH)**

Case No: 1339/2016

In the matter between:

L[...] A[...] V[...] E[...]

Applicant

And

G[...] L[...] V[...] E[...]

Respondent

JUDGMENT

BESHE J:

[1] This matter was on the roll of civil trials to be heard on the 14 October 2019. It is a divorce action. Ahead of it on the roll were two matters which were set to proceed, a trial and an opposed application for postponement. In respect of this matter as well, it was intimated to me that defendant will seek a postponement, and that plaintiff is opposing the application for a postponement. I was engaged with the trial and could not accommodate the two opposed applications for postponement. On the following day, the 15 October 2019, I was advised in court that the parties had subsequently agreed that the matter should be postponed. There was however no agreement as regards which of the parties should be responsible for the costs of the application, as well as whether the matter should be postponed *sine die* (applicant's /

defendant's stance) or according to the respondent / plaintiff it should be postponed to a preferential date in March next year, being 2020. As far as the costs are concerned, *Ms Crouse* for the applicant contended for an order directing that respondent should bear the costs of application because, in her submission the opposition was unwarranted. She submitted that the applicant has maintained during at least three Case Flow Management meetings that she was not ready to proceed on the 14 October 2019.

[2] *Ms Veldsman* for the respondent on the other hand contended for the reservation of costs. Support for this contention was that applicant's founding affidavit in respect of the postponement application is fraught with inaccuracies. And that those can be dealt with by way of cross-examination of the applicant during the trial. And that therefore the trial court will be best placed to determine which party should bear the costs of the postponement.

[3] The reason adduced on behalf of the applicant as to why it will not be appropriate to postpone the matter to a preferential date in March next year, is that it has not been possible to establish whether applicant's counsel who is currently out of the country will be available on the proposed date. Incidentally, it transpired that respondent's counsel will not be available on an earlier date that was suggested for allocation as a preferential date also in March next year.

[4] I am not called upon to determine whether the application for a postponement has merit or whether the opposition was justified because the parties have since agreed that the matter should be postponed. I have already stated in which aspects

the parties diverge as regards the apparently inevitable need for the postponement of the matter.

[5] It appears to me that it will be foolhardy to postpone the matter to a date on which it has not been possible to establish whether applicant's counsel will be available. Lest the parties find themselves in a similar situation as happened this time around. In my view, it will be appropriate to order that the matter be postponed *sine die*.

[6] Further, in order to ensure that none of the parties sit on their laurels, the matter should once again be subjected to case flow management in order to monitor *inter alia*:

arrangements for legal representation in respect of the applicant;

proposed joinder of the trust/s concerned;

finalisation of applicant's experts' reports.

[7] It will also be appropriate in my view to reserve the issue of costs for determination by the trial court or in the event of a settlement by agreement between the parties.

[8] I was placed in possession of what is entitled "The Addendum report of the Family Advocate". The addendum relates to the Family Advocate report in respect of the parties' minor child dated 14 November 2018. The purpose of the addendum is to seek the replacement of the minor child's therapy with the child's current therapist Ms Jackie McKowen who has apparently been appointed by the parties.

[9] The addendum was drawn to my attention by *Ms Veldsman*. *Ms Crouse* was not in a position to make any submissions in this regard in view of the fact that she was only briefed to move the application for a postponement only.

[10] In the interest of the minor child, I did not deem it necessary to insist on a formal / substantive application in this regard. Especially in view of the fact that Ms McKowen is the child's current therapist who I understand was appointed by the parties.

[11] Accordingly, the following order is issued:

(i) The matter is postponed *sine die*.

(ii) The Registrar is to reenrol the matter for case flow management to monitor *inter alia*:

Arrangements for the legal representation of the defendant; the proposed joinder of the concerned trust/s;

finalisation of defendant's expert report/s.

(iii) The minor child's therapist is hereby replaced with the current child's therapist Ms Jackie McKowen.

(iv) Costs of the application are reserved.

NG BESHE
JUDGE OF THE HIGH COURT

APPEARANCES

For the Applicant : Adv: E Crouse

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For the Respondent : Adv: Ellis

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Date Heard : 15 October 2019

Date Reserved : 15 October 2019

Date Delivered : 18 October 2019