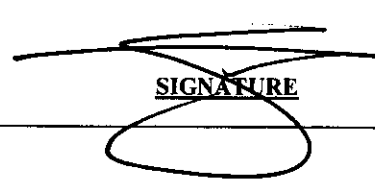


IN THE HIGH COURT OF SOUTH AFRICA

(GAUTENG DIVISION, PRETORIA)

DELETE WHICHEVER IS NOT APPLICABLE	
(1) REPORTABLE: YES / NO.	YES / NO.
(2) OF INTEREST TO OTHER JUDGES: YES / NO.	YES / NO.
(3) REVISED.	
8/5/2015. <u>DATE</u>	 <u>SIGNATURE</u>

8/5/2015

Case Number: 36774/13

In the matter between:

ILZÉ EICHSTÄDT ATTORNEYS

Plaintiff

and

DEBT RESCUE CC

Defendant

(Registration Number: 2008/168319/23)

JUDGMENT

POTTERILL J

- [1] The applicant, the defendant in the action, is applying for a postponement of a trial that was set down by the defendant. The applicant is also in terms of Rule 6(5) of the Uniform Rules of Court applying that portions of the opposing affidavit of the respondent, the plaintiff in the trial, of the substantive application for postponement be struck out.
- [2] For ease of reference I refer to the applicant as the defendant and the respondent as the plaintiff.
- [3] The substantive application for postponement was served on the plaintiff on 30 April 2005. The trial date was set down for 6 May 2015. On 4 May 2015 the plaintiff served its answering affidavit. This answering affidavit was e-mailed to the defendant at 17:09 on the 4th of May 2015. It was also served and filed on the defendant on the 5th of May 2015. Upon perusal it was the opinion of the defendant that the opposing affidavit contained defamatory and/or scandalous and/or vexatious and/or irrelevant and prejudicial allegations. On 5 May 2015 a letter from the defendant's attorney to the plaintiff's attorneys of record was e-mailed requesting them to withdraw such matter before 09:00 on 6 May 2015, failing which the applicant would proceed with an application to strike out. The replying affidavit and the application for strike-out were sent by e-mail to the attorney of record of the plaintiff after close of business. This was done as the trial was the next day.

[4] Background and chronology of events

- 4.1 On 18 November 2013 the pleadings were closed.
- 4.2 On 29 November 2013 the defendant requested the plaintiff to discover.
- 4.3 The defendant enrolled the action on 30 January 2014 for hearing on 6 May 2015.
- 4.4 On 4 February 2015 the plaintiff gave notice of an amendment to the particulars of claim which amendment was effected by service of amended pages on 3 March 2015. The pleadings were accordingly reopened. On 2 April 2015 the plaintiff started calling to re-arrange a pre-trial. On 9 April 2015 the pre-trial was rescheduled from 9 April 2015 to 20 April 2015.
- 4.5 On 20 April 2015 (9 days before trial) the plaintiff e-mailed a discovery notice wherein 1 326 items are discovered of which more than a 1 000 represented client files forming part of the quantum calculation.
- 4.6 On 21 April 2015 the plaintiff files and serves her discovery notice.
- 4.7 On 22 April 2015 (6 days before trial) a pre-trial conference was held.
- 4.8 At this pre-trial conference the plaintiff gave notice of a further amendment of the plea to the defendant's counterclaim.
- 4.9 Once again the pleadings were thus reopened.
- 4.10 In the defendant's Rule 37(4) list it was requested that a copy of the trial bundle be provided on or before 20 April 2015 for purposes of preparation.

4.11 The defendant requested copies of numerous items on the plaintiff's discovery list. The plaintiff requested payment for photocopying and once payment was made on 21 April 2015, the plaintiff advised the defendant that the items sought to be copied were in the plaintiff's trial bundle. This trial bundle was then served on 30 April 2015 (3 court days before trial) on the defendant.

4.12 The defendant had however served its application for postponement on 30 April 2015 before the aforesaid trial bundle was received. On 28 April 2015 the defendant filed its consequential amendment to the plaintiff's amendment of 3 March 2015.

[5] It was thus submitted on behalf of the defendant that the pleadings haven't closed; the plaintiff is not objecting to the amendment of the plea on the counterclaim, but once effected, will require a replication. The pleadings are thus not closed.

[6] The plaintiff's late discovery has prejudiced the defendant in its preparation and therefore the matter should be postponed.

[7] Once pleadings have closed a sensible separation of issues can be determined.

[8] In answer thereto the plaintiff set out that the matter is in fact ripe for hearing and the defendant is the party acting *mala fide* in bringing the application for

postponement because the defendant is in fact not ready for trial. The following reasons were set out for this averment:

- 8.1 The plaintiff in March 2015 filed an amendment to the particulars of claim and the amended plea of the defendant was only filed on 29 April 2015.
- 8.2 The plaintiff already on 2 April 2015 enquired to arrange a pre-trial conference and a date for 9 April 2015 was arranged. The defendant's attorney later changed the date to 20 April 2015 due to the non-availability of the senior counsel of the defendant; but it only transpired on 22 April 2015.
- 8.3 Mr. Day, attorney for the defendant, had on 7 April 2015 informed plaintiff's attorney that Labuschagne SC was briefed, but this was submitted as doubtful because Labuschagne SC's secretary was on 8 April 2015 unaware of this. Thus Labuschagne SC was only briefed on short notice; another indication that the defendant is not ready for trial. Veracity for this statement was found in paragraphs 4.5 and 4.6 of the founding affidavit which reads as follows:

"4.5 The plaintiff, during the pre-trial conference, also indicated that the plaintiff will place reliance on a core bundle to be utilised as a trial bundle, consisting of approximately 150 pages. In this regard the plaintiff undertook to make the draft trial bundle available to the defendant's representatives by no later than the morning of 28 April 2015."

4.6 *The undertaking to make the draft trial bundle available to the defendant's representatives was made in circumstances where it was recorded and placed on record that the **defendant had very little limited time** in which to prepare if it was to proceed to trial. The plaintiff's representatives was specifically informed that the defendant's representatives have set aside the 28th and 29th of April 2015 for purposes of preparation for trial."* [plaintiff's emphasis]

8.4 It is common cause that the plaintiff's trial bundle would be delivered to the defendant on 28 April 2015 and that it was forwarded to the defendant but after this substantive application for postponement had been drafted and e-mailed. The plaintiff is however not to blame for this situation as the defendant did not pay timeously for the copies of the documents.

8.5 The defendant's reliance on late discovery of the documents is *mala fide* because they are aware and able upon mere perusal of each and every item contained therein to identify what the item is and is in fact au fait with that item. Not in the pre-trial minutes, nor in the letter, neither at the stage when the discovery notice was delivered did they cry prejudice. This is all a clear indication that this is not a good reason for a postponement and is brought as an afterthought.

8.6 As for the amendment of the plaintiff's plea to the counterclaim it was already made clear at the pre-trial conference that if there was an objection

to such an amendment that the plaintiff would not proceed with the amendment. In support of this contention I was referred to a letter:

"Indien die voorgestelde wysiging van die pleit jou kliënt belg sal ons dit ernstig oorweeg om nie daarmee voort te gaan nie en dit as 'n kwessie vir argument aan die einde van die verrigtinge laat of anders na goeddunke tydens die verhoor daarmee handel."

This letter was dated the 24th of April 2015.

[9] In reply the plaintiff had set out that in fact all the documents that were discovered was upon perusal of the now received trial bundle - the "would be discovered" documents that they had paid for. It was submitted it was the first time in history that a party had to pay for another party's trial bundle.

[10] In reply the defendant explained that it could not discover because it could only discover what is in its possession. The plaintiff had retained the files due to non-payment therein and therefore only upon receipt of the files could they in their turn discover these files.

[11] Application to strike out

As for the application to strike out it was the defendant's contention that this application should not be heard and should be postponed. The defendant's attorney

and counsel effectively received it the morning of the trial and the defendant's attorney against whom a costs order is sought needs time to answer thereto. He needs to be afforded an opportunity to answer thereto when and where he pleases to do so. They also had travel time from the "*platteland*" (apparently Hartbeespoortdam) and could therefore not respond.

[12] As set out earlier in the judgment the opposing affidavit to the application for postponement was only received the day prior to the trial and the plaintiff accordingly could only bring the application pursuant to receipt of the opposing affidavit.

[13] I allowed the matter to stand down for an hour and a half for the plaintiff's attorney, who was in court, to read the 5 pages setting out why 4 paragraphs in the opposing affidavit contains matter that needed to be struck out. I also informed counsel for the plaintiff that I would be amenable to the attorney opposing the application by means of *viva voce* evidence. Pursuant to the adjournment I was informed that the plaintiff is not ready to proceed. I ordered that both applications were to be argued. I was then "*instructed*" by Mr. Bolt for the plaintiff to place on record that the application to strike out was "*litigation by ambush*".

[14] I find it pragmatic to deal with each paragraph, which contains the alleged material to be struck out, individually.

[15] Paragraph 2.4:

"I wish to point out the allegations made by Roets where they are in contradiction to what I say, are deliberate untruths and made in a blatant attempt to mislead this honourable Court."

Paragraph 2.4 is in answer to paragraph 1 of the founding affidavit which reads as follows:

"1.1 ...

1.2 I am duly authorised to depose to this affidavit, the contents of which falls within my personal knowledge and belief, unless the contrary appears from the context and/or is expressly stated and which are both true and correct.

1.3 ..."

[16] The allegation in paragraph 2.4 is most certainly defamatory. If this allegation is left unanswered the innocent party may well be defamed. The retention of this paragraph would therefore be prejudicial to the innocent party – ***Weeber v Vermaak en 'n Ander* 1974 (3) SA 207 (O)**. This allegation must thus be struck from the affidavit.

[17] Paragraph 2.5 of the answering affidavit reads as follows:

"I submit that this is the only reason why the Defendant' /Applicant's attorney of record, Mr. Morné Day ("Day"), did not make an affidavit, setting forth what actually happened at the pre-trial conference and that the other real fact is that he disagrees with the allegations made by Roets as relayed to him by a junior candidate attorney, A.N. Du Randt ("Du Randt"). Day is probably better aware of the consequences of lying under oath in order to deliberately attempt to mislead the Court than what Du Randt is in his limited exposure and experience as a young unqualified candidate attorney. As will be pointed out more fully here under by me it is a deliberate falsehood to state ..."

This paragraph is still in answer to paragraph 1 as quoted *supra*.

- [18] Although Mr. Bolt requested that this application be postponed, he did proceed to advance reasons for the above proposition made by the deponent to the answering affidavit. In fact Mr. Bolt exasperated the matter by from the bar loosely flinging around the following submissions: he emphasised that the defendant is unprepared and *"opsetlik"*, that their conduct *"spreek boekdele oor hulle gebrek aan bona fides"*, that the plaintiff *"woorde verdraai"* and rely on *"blatante onwaarhede"*. He himself made scurrilous remarks based on assumptions without having knowledge of the facts. He for instance stated that they were telling untruths about the consultation apparently set down for the 28th and 29th of April 2015 because the plaintiff had a

consultation on the 24th of April 2015. According to him the consultation of the 24th stretched over a whole day. He conceded that he was not there and would not know how long the consultation would have taken place, yet he persisted with this argument. He further submitted that it was accordingly a fallacy that they needed discovery to consult, because they consulted a whole day without any discovered documents. He further expressed his dismay that the defendant had served the substantive application for postponement on the 30th of April i.e. the day before a long weekend thus forcing him to work over the long weekend.

[19] In paragraph 5.3 it was stated:

"This will be pointed out more fully hereunder by me "it is a deliberate falsehood to state that the plaintiff/respondent adopted the attitude to proceed with the matter irrespective of the shortcomings".

Yet in answer to this averment as set out in paragraph 3.4 of the founding affidavit paragraph 5.3 of the answering affidavit reads as follows:

"It was pointed out to the Defendant's/Applicant's legal team that the Plaintiff/Respondent contends that she is ready to proceed to trial on 6 May 2015 and that she cannot be blamed for the fact that Defendant/Applicant has not pleaded to the amended particulars of claim. Also that Defendant/Applicant is not prejudiced nor advances any reasons therefore that it is prejudiced by the alleged late discovery by the Plaintiff/Respondent

and that the reasons advanced by the Defendant/Applicant rather indicates that the Defendant/Applicant is not ready to proceed to trial and/or to present it's case on it's counter claim."

[20] I find it absolutely astonishing that on behalf of the plaintiff it can be argued that they did not insist on proceeding with the trial. The plaintiff's own affidavit set out that they insisted to proceed with the trial.

[21] It was further set out that proof of the falsehoods is that it is untrue that an attempt to agree on the separations of issues was similarly dismissed by the plaintiff/respondent. Paragraph 3.5 reads as follows:

"In this regard I should also point out that when it was conveyed to the plaintiff's legal representatives during the pre-trial conference that the parties should, in any event, attempt to agree on the separation of issues, the plaintiff's representatives refuse to do so and expressed the view that the trial of the matter should continue in respect of all disputes."

In answer thereto in paragraph 5.9 the following is set out:

"On the way out, Advocate E. Labuschagne SC ["Labuschagne"] mentioned to Advocate Bolt in passing that the question of separation of the merits and

quantum should be considered. Advocate Bolt pointed out that in the final draft pre-trial minute it is contended for on behalf of the Plaintiff/Respondent that Plaintiff/Respondent is of the opinion that there exist no reasons to do so. Advocate Labuschagne SC indicated that he will consider the Defendant's/Applicant's position after the consultation."

[22] It was recorded that there should be no separation of quantum and merits in the plaintiff's draft pre-trial conference minute. It was told to Adv. Labuschagne on the way out of the pre-trial conference. Mr. Bolt also in court strenuously tried to convince the court as to why there should be no separation of merits and quantum. What then defies all logic is that the averment is then made that the defendant is blatantly lying to this court in making such submission. In fact this court is astounded that such submissions can be made to this court in good faith.

[23] It was also strenuously argued on behalf of the plaintiff that the defendant never raised the late discovery by the plaintiff as a point of prejudice at the pre-trial conference (paragraph 23.2 of the defendant's reply). It was submitted that on page 112 of the application the pre-trial minute of the plaintiff reflected as follows:

"1. Nadeel:

Nie een van die partye opper op die stadium enige benaderling nie weens die nie- of laat voldoening aan enige bepaling van die hofreels nie."

It was submitted by plaintiff's counsel that such an averment was a blatant lie. This pre-trial minute is most certainly not complete. Paragraph 5 has many question marks next to whether there should be separation indicating that nothing was decided pertaining to paragraph 5. Paragraph 9 has empty spaces in a sentence. Its speaks for itself that late discovery of 1 326 items of which more than 1 000 items represent client files holds prejudice to a party. The fact that the defendant worked on the files, most certainly does not entail that the defendant can go to court without having sight of these files, let alone be prepared on a quantum dispute without having insight to these documents.

- [24] Reliance was also placed on the untruthfulness of the averments that the pre-trial conference was recorded because in fact the pre-trial conference was not recorded. It was not recorded because the attorney for the plaintiff did not fulfil his duty and did not keep the minute of the pre-trial conference. However orally issues were "recorded". Reliance on this submission to call an officer of the court a liar is most certainly scurrilous.

- [25] Not one of these "untruths" is substance for the averment that Mr. Day deliberately let his clerk depose to the affidavit in an attempt to mislead the court. This is so scandalous that one's breath is taken away; it is so irrelevant but so worded as to be defamatory. The attorney for the defendant and his article clerk in other words made this plan so that they could lie in an affidavit to deliberately mislead the court. In the first instance on affidavit these untruths turn out to be truths and secondly Mr. Bolt complained that Mr. Day had to leave the pre-trial conference early and left the pre-trial in the hands of his little experienced article clerk. It is no wonder that the article clerk made the affidavit as he attended the pre-trial till the end.
- [26] It is thus so clear that the defendant has satisfied the requirement that the paragraph indeed has scandalous matter and that is to the prejudice of the defendant. The matter in this paragraph must thus be struck out.
- [27] Paragraph 6.3.1 relates to the fact that the late discovery could not prejudice the defendant as the defendant did not need a copy of the trial bundle for preparation purposes for trial. This is especially so as he intended to make discovery of the exact same documents. I need not repeat the court's finding pertaining to discovery as set out *supra*. A defendant is entitled to discovery and the trial bundle in order to prepare. It is common cause that the trial bundle was not available for the dates set aside for consultation. The defendant thus proved that this vexatious and scurrilous

and scandalous averment is prejudicial to the defendant. This portion of the paragraph is accordingly to be struck.

[28] Paragraph 6.6.5 of the answering affidavit specifically refers to the fact that paragraphs 4.6 and 4.8 are fallacious. Paragraph 4.7 of the founding affidavit expressly sets out that the defendant is of the opinion that the matter is not ripe for hearing as they need the trial bundle for their preparation for trial purposes on the 28th and the 29th of April 2015. On behalf of the plaintiff it was argued that they had already consulted on the 24th without any documents and therefore this is fallacious. It is very clearly set out by the applicant that the consultation of the 24th related to settlement and in fact is confirmed with the letters attached to the notice to the founding affidavit. It is thus mindboggling that the deponent to the answering affidavit can make the following averment:

"The fact of the matter is that Roets knew the exact content and nature of the discovered documents and he intended to make discovery of the exact documents as is indicated in paragraph 7 of Annexure 'R7'. The Defendant/Applicant, thus, did not need a copy of the trial bundle in order to prepare for trial."

Using these averments as a basis for an averment that the deponent to the founding affidavit made fallacious statements intending to mislead this court can have nothing

else but an effect on the costs order given herein. In paragraph 6.6.5 the prejudice to the defendant speaks for itself and this portion of the paragraph must also be struck out.

[29] Even if the untruths were found to be untrue, that is not the test in an application for striking out. In *National Director of Public Prosecutions v Zuma* 2009 (2) SA 277 (SCA) in paragraph [25] it was held as follows:

"... It is correct that relevance has to be tested with reference to the merits of the case but that does not mean that relevance depends on the factual merit of the impugned allegations. Whether they are true or not is of no moment; their relevance to the merits of the case is what is of consequence ..."

The relevance to the merits of this application for postponement is of consequence and therefore the application for striking out is upheld.

[30] It was submitted that due to the fact that the deponent on behalf of the respondent was an attorney, the attorney should be censured by an appropriated costs order and therefore it was submitted that the appropriate order would be one of *de bonis propriis*. It was further submitted that the costs should be on an attorney and own client scale including the costs of two counsel.

[31] On behalf of the plaintiff it was argued that the intricacy of this matter did not require two counsel and that under no circumstances the costs of two counsel should be awarded.

[32] A court has a wide discretion to make an appropriate costs order pertaining to a striking out application. It includes an order for costs on the attorney and client scale depending on the facts and circumstances of the matter – *Rail Commuter Action Group v Transnet Limited t/a Metrotrail (No 1) 2003 (5) SA 518 (C)* at 589F-G. It follows that where the application for striking out is successful the costs must be awarded to the successful party. In order to grant a punitive costs order on an attorney and client scale it is so ordered to mark the court's disapproval of the conduct of the losing party. However the true explanation of awards of attorney and client costs is that by reason of special considerations arising either from the circumstances which gave rise to the action or from the conduct of the losing party the court in a particular case considers it just, by means of such an order, to ensure more effectually that it can do by means of a judgment for party and party costs that the successful party will not be out of pocket. A court will only make such an order if there are special grounds present. In these circumstances the party has acted unreasonably, recklessly and vexatious. The conduct of the deponent is certainly reprehensible in his impugning the deponent's honour. I am thus satisfied that these special circumstances justify a reward on an attorney and client scale. The question then remains whether the attorney who is representing the plaintiff must

pay these costs himself. The basic notion underlying such an award is a material departure from the responsibility of his office. In deciding whether the representative's party's conduct is reasonable the test is not that from the point of view of the trained lawyer, but from the point of view of the man of ordinary ability bringing an average intelligence to bear at the question at issue – *Re Estate Potgieter* 1909 TS 982 at 1012. This is most certainly not a case where the representative made a mere error of judgment or acted *bona fide*. The whole tenure of the defamatory allegations were continued orally from the bar by the representative on behalf of the plaintiff. These remarks were, thus as seen from the point of view of an ordinary person of average intelligence, persisted with intent.

[33] I accordingly make the following order:

The objectionable matter is struck out and the deponent, Jaco du Plessis, must pay the costs *de bonis propriis* on an attorney and client scale. The costs do not include the costs of two counsel. Mr. Du Plessis has 7 work days to file argument as to why he should not pay the costs *de bonis propriis* and why his client should pay these costs. These reasons must be submitted to my chambers as well as to the defendant's representative for them to file counter submissions. If no submissions is received within 7 working days from today the costs order as set out will stand.

[34] Application for postponement

A court has a wide discretion as to whether an application for a postponement should be granted or refused. The discretion must be exercised in a judicial manner. An applicant for a postponement is seeking an indulgence and therefore the applicant must set out good and strong reasons furnishing a full and satisfactory explanation of the circumstances that gave rise to the application for postponement. An application for postponement must be made timeously, as soon as the circumstances which must justify such an application becomes known to the applicant. Naturally an application for postponement must be made *bona fide* and must not be used as a tactical manoeuvre. The dominant test for a court in deciding whether a postponement must be granted is considerations of prejudice. This would also involve the balance of convenience to both parties if a postponement should be granted.

[35] The plaintiff submitted that the application for postponement was not made timeously. This contention is to be rejected for the following reasons:

35.1 Already on 24 April 2015 the defendant's attorney informed the plaintiff's attorney that the matter is not ripe for hearing and that they suggest that the matter be postponed on 6 May 2015 with the costs to be reserved. On 25 April 2015 an e-mail by the defendant's attorney to the plaintiff's attorney

informs the plaintiff that they will proceed with a substantive application for postponement as the plaintiff has declined such a suggestion. On 29 April 2015 an answer of the defendant on the plaintiff's draft pre-trial note is served on the plaintiff's attorney. In this pre-trial note it is once again reiterated that the matter is not ripe for hearing. The notice of motion for application is then served on the plaintiff's attorney on the 30th day of April 2015. The trial bundle was not yet received by the defendant and they accordingly proceeded to request a postponement. The defendant thus approached this court as soon as it became aware of the circumstances which justify such an application.

[36] I am satisfied that the plaintiff set out sufficient reasons for the postponement. It is common cause that the pleadings are not closed. The plaintiff's counsel does not seem to understand the difference between opposition of an application for an amendment and the right to file a further pleading to the amendment. The defendant has reiterated over and over that it is not objecting to the proposed amendment of the plaintiff's plea to the defendant's counterclaim but that it relates to a limitation of damages and therefore requires a replication. The pleadings are thus not closed. Secondly, I am satisfied that although the defendant had worked on the files that are to be discovered they are not in his possession due to the retainment of the files by the plaintiff and that they most certainly not on such

voluminous documents can proceed to trial without having seen those documents again. This is accordingly a good reason and a full and satisfactory explanation has been set out as to why the application for postponement must be granted. This again entails that the defendant could not consult on the 28th and 29th in preparation for trial without having a trial bundle. This is also a good and just cause for an application for postponement. On these two facts alone the application for postponement should be granted.

[37] As set out in *Alice in Wonderland*: "curiouser and curiouser ..." plaintiff's counsel in closing requested that the court grant the application for postponement, because he is well aware of the view that a court is slow in denying a postponement. It is thus mindboggling that the matter was argued for nearly a full court day only to be then consented to. When confronted with this the plaintiff's counsel then persisted that the application should be denied but that if the court should grant the postponement that the defendant should carry the costs on an attorney and client scale.

[38] The party seeking the indulgence would ordinarily be ordered to carry the costs. I am however satisfied that the exercise of my discretion under these circumstances would necessitate that the plaintiff carry the costs. The reason for this is that the plaintiff has acted unreasonably resulting in increasing the costs unnecessarily. The

plaintiff unreasonably opposed an application for a postponement and therefore may be ordered to pay the costs of the opposition – *Madinda v Minister of Safety and Security 2008 (4) SA 312 (SCA)* at 323I-324A. Where pleadings are not closed a matter may not proceed, where voluminous trial bundles were not in the possession of the defendant in order to consult in preparation for trial and these reasons are forwarded to the plaintiff, but rejected, the plaintiff has unreasonably increased the costs. This unreasonable conduct can only be ascribed to the fault of the plaintiff and/or the plaintiff's representative. I am thus satisfied that I would exercise my discretion judicially in depriving the plaintiff of its costs where the defendant requested an indulgence and I accordingly would make the following order:

The application for postponement is granted. The trial is postponed *sine die*. The plaintiff is to carry the wasted costs of the postponement including the costs of one counsel. I am satisfied that for the application for postponement two counsel was not necessary. It was clear that they could not prepare for trial as they did not have the bundles. Under these circumstances I am satisfied that the plaintiff is only to carry the costs of one counsel.

[39] The following order is made:

1. The objectionable matter is struck out and the deponent, Jaco du Plessis, must pay the costs *de bonis propriis* on an attorney and client scale. The costs do not include the costs of two counsel. Mr. Du Plessis has 7 work days to file argument as to why he should not pay the costs *de bonis propriis* and why his client should pay these costs. These reasons must be submitted to my chambers as well as to the defendant's representative for them to file counter submissions. If no submissions is received within 7 working days from today the costs order as set out will stand.
2. The application for postponement is granted. The trial is postponed *sine die*. The plaintiff is to carry the wasted costs of the postponement including the costs of one counsel.


S. POTTERILL

JUDGE OF THE HIGH COURT

CASE NO: 36773/2013

HEARD ON: 6 May 2015

FOR THE PLAINTIFF/RESPONDENT: ADV. L. BOLT

INSTRUCTED BY: Jaco du Plessis Attorneys

FOR THE DEFENDANT/APPLICANT: ADV. E.C. LABUSCHAGNE SC

ADV. G.F. HEYNS

INSTRUCTED BY: Day Inc

DATE OF JUDGMENT: 8 May 2015