



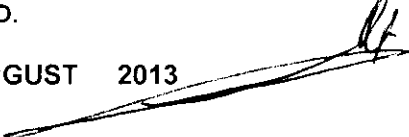
IN THE NORTH GAUTENG HIGH COURT, PRETORIA

[REPUBLIC OF SOUTH AFRICA]

CASE NO: 69766/2011

21/8/2013

(1)	REPORTABLE: YES / NO
(2)	OF INTEREST TO OTHER JUDGES: YES/NO
(3)	REVISED.
02 AUGUST 2013	



In the matter between:-

THE SOUTH AFRICAN DENTAL
ASSOCIATION NPC

APPLICANT

And

MINISTER OF HEALTH

FIRST RESPONDENT

THE HEALTH PROFESSIONAL COUNCIL

OF SOUTH AFRICA

SECOND RESPONDENT

THE CHAIRPERSON OF THE PROFESSIONAL

BOARD FOR DENTAL THERAPY AND ORAL HYGIENE THIRD RESPONDENT

ORDER

MAVUNDLA, J.,

[1] On the 12 March 2013 this Court made the following order:

"1. That the application is postponed *sine die*.

2. That the postponement is granted on the following terms:

2.1 On or before 13 March 2013, the Applicant shall serve on all of the respondents a copy of the documents which were filed by the State Attorney on 23 January 2013 in the original order that those documents were filed with the Registrar of this Court.

2.2 The second and third respondents shall file their answering affidavit on or before 28 March 2013.

2.3 The fourth respondent shall file any affidavit in response thereto on or before 15 April 2013.

2.4 The applicant shall file any further affidavit on or before 29 April 2013.

2.5 The applicant shall file its heads of argument on or before 14 May 2013.

2.6 All of the respondents shall file their heads of argument on or before 28 May 2013.

- 2.7 The parties shall thereafter jointly approach the Deputy Judge President of this Division to arrange a special allocation for the hearing of the matter in the third motion court on the earliest available dates after 28 May 2013.
3. That in respect of the costs of the application for the postponement each party to pay its own costs;
4. That in respect of the costs occasioned by the postponement:
- (i) The Second and Third Respondents jointly and severally the one paying the other to be absolved, to pay 50% of the taxed and allowed costs of the First and Fourth Respondents, which costs to include the costs of two counsel where applicable or of Senior Counsel where only one counsel employed;
 - (ii) The Applicant (in the main application) to pay 50% of the taxed and allowed costs of the First and Fourth Respondents, which costs to include the costs of two counsel where applicable or of Senior Counsel where only one counsel employed;
 - (iii) The Second and Third Respondents and the Applicant (in the main application) each to pay its own costs."

I also indicated that the reasons for this order will follow. I now proceed to set out the reasons.

- [2] The application for the postponement was brought by the second and third respondents, founded on an affidavit deposed to by their attorney of record. For purposes of convenience, the parties

have been referred to as cited in the main application. The application for postponement was opposed by the applicant in the main application.

- [3] It is trite that the party who seeks a postponement must bear the costs occasioned by the postponement. Equally trite is the fact that the matter of costs, is a matter of the discretion of the Court.
- [4] The importance of the main application lies in the very fact that the review sought is to have a series of regulations, aimed at establishing and regulating the profession of Dental Assistant, set aside. The matter in essence concerns the validity of the promulgation of the said regulations, in the light of the provisions of the Health Professions Act 56 of 1974.
- [5] It is common cause that the duty to file the record in terms of Rule 53 of the Uniform High Court Rules rested upon the applicant in the main application. The applicant on 20 July 2012 filed a record, which it considered to be defective. The first respondent subsequently remitted further documents to the applicant, as the result of which the applicant filed a supplementary record. However, the record subsequently filed, was dissimilar to the original record.

[6] The applicant had advised the second and third respondents that it intended to file a supplementary affidavit.¹ The applicant delayed in providing the supplementary record, notwithstanding request by the second and third respondent's to do so.² This delay, in my view, contributed in the second and third respondent's not being able to file their answering affidavit much earlier, resulting in the need to bring the application for a postponement. Further the applicant filed dissimilar records and this also contributed in the need to apply for the postponement³.

[7] In my view, the fact that the applicant filed dissimilar records, contributed in the matter not being trial ready on the 12 March 2013. The applicant unsuccessfully opposed the application for the postponement. The first respondent did not oppose the application for postponement. In my view, in the circumstances of this case, it is just and fair that in so far as the costs for the application for postponement are concerned, each party should bear its own costs.

[8] The second and third respondents were initially represented by the very same attorneys of record. The second and the third respondents permitted these attorneys to withdraw from the matter⁴ only to bring them back on record⁵. The fact that the

¹ Vide annexure MMM7 which is a letter dated 1 February 2013 from the applicant's attorneys of record.

² Vide annexure MMM10 paginated page 35 which is a letter dated 12 February 2013 from the second and third respondent's attorneys of record requesting the applicant to file the supplementary record.

³ Vide annexure NMMM11 which is a letter dated 22 February 2012 from the State attorney to the applicant's attorneys of record, particular at paginated page 37: "3. We note with concern that the copies of the Supplementary

⁴ Moduka Attorneys withdrew as attorneys of record on 30 May 2012.

attorneys were not trial ready on the 12 March 2013, was in my view, caused by the second and third respondents in not keeping its attorneys on record at all times. This also contributed to the said attorneys not being in a position to file the second and third respondents' answering affidavit in time. For this reason the second and third respondents must be mulcted with the costs occasioned by the postponement. However, the applicant also filed dissimilar records and therefore must also be mulcted with the costs occasioned by the postponement. In the circumstances, it is in my view just and fair that the second and third respondents on the one hand and the applicant on the other hand must equally be mulcted with the costs occasioned by the postponement, as already done.

- [9] As already indicated herein above, the matter was not trial ready on 12 March 2013. This resulted in the fourth respondent's application for provisional joinder not being ventilated. Consequently, in my view, it is just and reasonable that the resultant costs of the fourth respondents of the 12 March 2013 should be borne by the parties who contributed in the matter not being trial ready on 12 March 2013. It is for that reason that I ordered that the applicant on the one side and second and third respondents on the other should each pay 50% of the costs occasioned by the postponement.

- [10] I therefore hand down the reasons.

⁵ Moduka Attorneys were re-instated as attorneys of record on 30 October 2012.


JUDGE OF THE HIGH COURT

DATE OF HEARING	:	12 MARCH 2013
DATE OF JUDGMENT	:	02 AUGUST 2013
APPLICANT'S ATT	:	WERKSMANS ATTORNEYS
APPLICANT'S ADV	:	ADV B. E. LEECH S.C. with ADV. K.S HOFMEY.
1 ST RESPONDENTS' ATT	:	STATE ATTORNEYS
1 ST RESPONDENT'S ADV	:	T.P. KRUGER
2 ND & 3 RD RESPONDENTS, ATT :		MODUKA ATTORNEYS
2 ND & 3 RD RESPONDENTS, ATT :		ADV. T. KMHWANAZI
4 TH RESPONDENT'S ATT	:	LAWYEARS FOR HUMA RIGHTS
4 TH RESPONDENT'S ADV	:	ADV. DE VOS S.C. with ADV. G. SNAYMAN