



**IN THE LABOUR COURT OF SOUTH AFRICA
HELD AT PORT ELIZABETH**

Not Repotable

CASE NO: P21/2009

In the matter between:

SHANE STEVEN WEWEJE

Applicant

And

POST OFFICE PENSION FUND

Respondent

Heard: 22 May 2013

Delivered: 9 May 2014

Summary: An application for a postponement may be granted when an appropriate Court order may compensate the respondent's prejudice caused by such postponement.

JUDGMENT

Lallie J

[1] The applicant launched an application on 16 February 2009 for an order that the respondent consider his entitlement to disability benefits in terms of the Post Office Pension Fund, alternatively, an order directing the respondent to refer the dispute

regarding the applicant's entitlement to disability benefits in terms of Section 9.8 of the Statutes of the Post Office Pension Fund, dated 27 September 1999. The respondent opposed the application.

[2] On 5 December 2012 the respondent filed an application in terms of Rule 11 for the dismissal of the applicant's application owing to his failure to prosecute it within a reasonable time. The dismissal application was set down for 22 May 2013. A day before the application was heard, the applicant filed an application for the postponement of the dismissal application. The reason proffered by the applicant was that he was advised of the dismissal application by his erstwhile attorneys on 15 May 2013. The attorney also advised him to seek an alternative representative as he could no longer assist him. The applicant's present attorney received his file on 18 May 2013 and her request to have this matter postponed by consent was unsuccessful. The application is opposed by the respondent.

[3] In National Police Service Union v Minister of Safety & Security¹ it was held that an applicant must furnish a full and satisfactory explanation of the circumstances that gave rise to the application. An application for a postponement must be *bona fide* and not used as a delaying tactic. In deciding a postponement application regard must be had to prejudice it may cause and whether such prejudice may be compensated by an appropriate costs order.²

[4] The respondent's main grounds for opposing this application are that this court lacks the necessary jurisdiction to determine the matter as the applicant seeks money not from his employer but from a pension fund. He has no prospects of success. This matter was postponed in 2009 for him to refer it to another forum. The respondent denied that the applicant became aware only on 15 May 2013 of the dismissal application as, on his own version, he contacted his erstwhile attorneys at least once a month. He should therefore have been aware of the dismissal application when it was filed in December 2012.

¹ 2000 (4) SA 1110 (CC) at 1112 C - F

² In this regard see: *Shilubana and Others v Nwamitwa* (National Movement of Rural Women and Commission for Gender Equality as *amici curiae*) 2007 (5) SA 620 (CC) at 624F.

[5] I am not convinced that the applicant seeks the postponement as a delaying tactic. The telephone message from his erstwhile attorneys supports his version that he was advised of the dismissal application on 15 May 2013. His monthly communication with his erstwhile attorney did not necessarily translate to being kept abreast of the developments in his matter. The applicant is a layman. He reasonably believed that his case was in good hands. In the event of his application being refused, he will suffer the prejudice of losing his right to be heard. He has given satisfactory reasons for the circumstances which led to this application. This court does not take the decision to close its doors to litigants lightly.

[6] The respondent will suffer prejudice should the application be granted in that bringing this matter to finality will be delayed. However, it is the applicant who stands to be more prejudiced should this application be refused as he will be denied of the opportunity to oppose the application to dismiss his application. A decision in the respondent's favour in the dismissal application is dispositive of the applicant's main application. An appropriate costs order will compensate the prejudice the respondent stands to suffer as a result of the postponement. The respondent should however not be out of pocket as a result of the indulgence of a postponement being granted to the applicant.

[7] In the premises, the following order is made:

7.1 the application for postponement is granted;

7.2 the applicant is directed to deliver his answering affidavit in the dismissal application within 14 days;

7.3 the applicant pay the respondent's costs.

Lallie J

Judge of the Labour Court of South Africa

Appearances:

For the Applicant: Mr. van der Walt For JA Gordon & Associate

For the Respondents: Advocate Euijen
Instructed by: Goldberg & de Villiers Inc.