



Not Reportable

**THE LABOUR COURT OF SOUTH AFRICA,
HELD AT JOHANNESBURG**

Case No: J 1824/15 & JS 766/15

In the matter between:

**SUSARA MARIA NORTJE & 7
OTHERS**

Applicants

and

**REGENESYS MANAGEMENT (PTY)
LTD**

Respondent

Heard: 11 September 2017

Delivered: 11 September 2017

INTERLOCUTORY JUDGEMENT ON POSTPONEMENT

- [1] The respondent belatedly filed a formal postponement application on the date of the trial hearing (11 September 2017), having previously advised the applicants on 28 August of its intention to do so, ostensibly because to of its main witnesses were out of the country. On 1 September it identified the two main witnesses in question as Dr Penny Law ("Law") and Dr Marko Saravanja ('Saravanja') who were away for mixed "business and

pleasure” purposes, but ostensibly could not postpone the trip to a later stage because of business purposes.

- [2] Apparently on the same day, the respondent’s attorney learnt that another witness, the former chief executive officer of the respondent, Ms Brownlee, who had left the respondent’s employment as far back as May 2017 would not be available either because “she was travelling a lot.” In all the correspondence exchanged with the applicant’s attorney no mention was made of her unavailability until the respondent filed its postponement application, even though it is attorney of record claims to have known of this difficulty since 1 September. It also appears that in fact Law would have been available but was not a crucial witness anymore. The applicant could offer no explanation for not contacting Brownlee prior to 1 September except to say that it had no reason to believe she would not make herself available to testify notwithstanding her not having worked for the respondent for a few months. Any attorney with reasonable experience in litigation would know that past loyalties of an employee are an insufficient guarantee that such person will be willing and available to testify, quite apart from the fact that since they are no longer employed they are not guaranteed that they will be compensated for any loss of current remuneration they may suffer as a result of not being at work while they are testifying.
- [3] I accept that as things stand, the respondent is not in a position to commence proceedings as it is obliged to do and that the matter would be decided virtually on a default basis if it proceeds, which would be tantamount to it conceding the case. It is only because of the possible fundamental unfairness that might result if the matter proceeded today that I am willing to grant a postponement notwithstanding the fact that it was not timeously brought.¹ That said, I am not entirely convinced of the veracity of the various reasons given for the unavailability of its key witnesses, but no doubt that is something that will be explored under cross examination. On the other hand, there is no reason why the applicants

¹ See e.g. *Myburgh Transport v Botha t/a SA Truck Bodies* 1991 (3) SA 310 (Nm) and *Greyvenstein v Neethling* 1952 (1) SA 463 (C).

should suffer any more prejudice than the court can prevent under the circumstances. Accordingly, I am of the view that the applicants should not suffer any financial prejudice whatsoever as a result of this delay and that the respondent's tender of wasted costs must be augmented.

Order

- [1] The trial is postponed *sine die* and the registrar is directed to enrol the matter at the earliest available date.
- [2] The respondent must pay the applicants wasted costs of the postponement, on the attorney own client scale.
- [3] The respondent must reimburse the applicants' all their actual travel and accommodation costs incurred as a result of the postponement and reimburse the applicants any lost wages incurred as a result of taking time off work or, in the case of applicants currently performing temporary work, wages lost as a result of not availing themselves of temporary work they could have performed during the period the trial was set down from 11 to 16 September 2017, inclusive, at the usual rate of pay they have been receiving for performing such temporary work.
- [4] The above amounts must be paid before trial proceedings recommence, failing which the respondent shall be barred from opposing the matter, which shall proceed on a default basis.

Lagrange J

Judge of the Labour Court of South Africa

APPEARANCES

APPLICANTS:

L Erasmus instructed by DD P Attorneys

FIRST RESPONDENT:

D Groenewald instructed by CHJ Higgs

LABOUR COURT