



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

Case no: JS 83/14

In the matter between:

**MOLONTJIE FRANSCISCA
MANAKA**

Applicant

and

**SOUTH AFRICAN NATIONAL
COUNCIL FOR THE BLIND**

Respondent

Costs order delivered: 6 March 2018

COSTS ORDER

LAGRANGE J

Background

- [1] On 17 August 2017, the trial in this matter was postponed *sine die* as a result of the late withdrawal of the applicant's erstwhile attorneys of record, Makhubela Attorneys ('Makhubela'). Makhubela and the applicant were

called upon to show cause why they should not respectively be held liable for the costs of the postponement.

- [2] The trial was scheduled to start on 17 August 2017, and the notice of withdrawal dated 14 August was only filed on 16 August. The respondent's attorneys were only notified on 15 August of Makhubela's withdrawal as attorneys of record on instruction of the applicant.
- [3] The versions of the applicant and Makhubela concerning their communications in the fortnight before trial are not consistent. What is clear is that Makhubela tabled an offer of settlement by 3 August. It is difficult to accept that Makhubela only canvassed this proposal with the applicant as late as 12 August. The applicant makes no mention of her husband's involvement in demanding that Makhubela surrender her file or in demanding that Makhubela file a letter of withdrawal. On the affidavits, it seems most probable that an instruction to Makhubela to withdraw as attorneys of record was only issued to them on 14 August. On the other hand, the respondent's attorneys were corresponding with Makhubela from 25 July on final preparations for trial and Makhubela was dilatory in responding and failed to file a practice note by 11 August. Makhubela is vague about when it became aware that it would be difficult to obtain counsel and does not mention the applicant's claim that she was only advised on or about 8 August that there was a need to obtain other counsel.
- [4] I accept that Makhubela may have been struggling to secure counsel and were trying to persuade the applicant to settle the matter before trial, but it should not have been still trying to confirm the appointment of counsel barely a week before trial. It is clear that, it was clearly not in a position to proceed. In the circumstances, it should have given the applicant more warning of the impending crisis in the trial preparation.
- [5] Having considered the affidavits filed, I am satisfied that Makhubela Attorneys' failure to try and address a settlement earlier so that they and the applicant could take stock of the matter timeously before the trial preparation was adversely affected was in large part the cause of the late withdrawal by the applicant of her instructions to them . They are better

equipped than the applicant to know what was required to prepare for trial and were late in their preparations. Her late withdrawal of her instructions to them, notwithstanding that she was not entirely blameless for doing so is mainly a consequence of Makhubela's belated preparations.

- [6] In the circumstances, in law and fairness, Makhubela should pay the wasted costs of the postponement.

Order

- [7] Makhubela Attorneys must pay the respondent's wasted costs of the postponement

Lagrange J
Judge of the Labour Court of South Africa
(In Chambers)

LABOUR COURT