



IN THE HIGH COURT OF SOUTH AFRICA  
(NORTHERN CAPE DIVISION, KIMBERLEY)

Case Number: 913/2023

In the matter between:

JORENE SNYDERS (MPUTSOE)

Applicant

and

ELIZABETH CONRADIE SCHOOL

Respondent

Coram: Lever J

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JUDGMENT

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Lever J

1. This is an application to postpone an application for leave to appeal (ALA) *sine die*. The ground stated for this postponement is that it is alleged that the applicant is not mentally fit to conduct her own legal proceedings. That the application be postponed until she is mentally fit to conduct her own legal proceedings. Further, that this court subpoena her Doctor, Doctor E. Christopher to appear in person to give evidence or to produce books, or

documents on behalf of the applicant. That in the event of opposition to this application that the respondent pays the costs of such application.

2. It is necessary to give some background to put the present application to postpone the ALA *sine die* into its proper context. The application originally brought by the present respondent was for the eviction of the present applicant from a flat attached to the Victor Vaughn Hostel at the Elizabeth Conradie School in Kimberley. The present applicant came to occupy this flat as the right to occupy such flat was part and parcel of her appointment as a Supervisor Level III at the Victor Vaughn Hostel at the respondent school. It was the present respondent's case that present applicant's appointment as supervisor at the hostel was for a fixed period from the 1 February 2022 until the 31 December 2022.
3. It is common cause that the Elizabeth Conradie School is a school for children with special needs. It was never disputed that the occupation of the flat concerned goes hand in hand with the appointment as the supervisor at said hostel. It is also not in dispute that the children who board at the said hostel are children with special needs. It was the present respondent's case in the eviction application that the present applicant's fixed term as a Supervisor at the hostel had come to an end. That another supervisor had been appointed and that the school needed the said flat for the new appointee as the boarders at the said hostel, being children with special needs, needed 24-hour supervision and access to a responsible adult. It was also common cause that at the time material to the eviction application, the present applicant was no longer performing these duties. In short, the relevant flat was needed for the new incumbent to take care of the children with special needs in the relevant hostel.

4. The present applicant refused to vacate the said flat and ultimately after some delays the eviction application was heard by me on the 7 June 2024. I delivered an *ex-tempore* judgment evicting the current applicant and because of her medical condition and the fact that she has two very young children I had to consider the period she should be allowed to find alternative accommodation. I had to weigh her needs and the needs of her own children against the needs of the special needs children that boarded at the said hostel as well as the present respondent's responsibilities in that regard. When I heard the application for eviction the school was about to go on a three-week break. Weighing up the needs of the boarders in the hostel concerned and the needs of the present applicant and her family, I determined that in all the circumstances she and her family be given two months to vacate the relevant flat from the date of the said Order on the 7 June 2024.
5. The present applicant filed her ALA in respect of the eviction Order on the 3 September 2024. Somewhat out of time, but an application for condonation is pending. The ALA was set down for hearing on the 3 December 2024. At the hearing on the 3 December 2024 the present applicant appeared in person and moved an application for a postponement orally without notice to the present respondent and without a substantive application. She only had a medical certificate which is not complete. Such medical certificate states she is booked off from work from 18 November 2024, but it does not state until when she is booked off work. The said certificate states that the present applicant suffers from Bipolar Disorder, Rapid Cycling (which is not explained), depression, generalised Anxiety Disorder and panic disorder.
6. The said certificate books the present applicant off work, but it does not state that because of her condition she cannot represent herself in court. Also, after a few postponements in her favour before the 7 June 2024, on the 7 June 2024 she moved a further application for

a postponement on similar grounds to the present application. In the circumstances I refused that application. Ms Snyders, the present applicant, presented her circumstances to the court during the eviction application. Despite her ongoing condition she presented her situation to the court cogently.

7. On the 3 December 2024 I wanted to know from the present applicant what had changed why she could not now present her case cogently. Ms Snyders maintained that she could not present her case. I pointed out that there was no substantive application for a postponement. Ms Snyders asked for a chance to bring a substantive application for a postponement. It is on this basis that I postponed the ALA to 22 January 2025 for her to get more substantive medical evidence in the form of an affidavit from her Doctor and bring the required substantive application for a postponement.
8. The present application for a postponement *sine die* was launched only yesterday. There is no supporting affidavit from her Doctor and all the applicant said is that her Doctor will not be able to provide her with an affidavit.
9. The present applicant informed me that she is entitled to legal representation under the provisions of section 15 of the Mental Health Care Act 17 of 2002. In her own affidavit she informs the court that she applied for Legal Aid which was refused on the basis that she is not indigent, even though she is under debt review. Ms Snyders made no attempt to set out her updated financial position or what attempts she has made to secure legal representation. Her opposing papers in the eviction proceedings were drawn by an attorney. She makes no attempt to explain how she paid an attorney then but can't do so now. It is also not stated whether she appealed the Legal Aid Board decision or if she just left it unchallenged.

10. The present applicant makes the bold assertion that the present respondent will suffer no prejudice if a postponement *sine die* is granted and that she will suffer prejudice because of her mental health if such postponement is not granted.
11. The present respondent points out that it will suffer grave prejudice. The special needs children in the said hostel will be deprived of a 24-hour supervisor indefinitely after the present applicant has already stayed an additional five months beyond the original two months granted to her in the court order which is the subject of this ALA. The school, the present respondent, is prejudiced in that it must try and make alternative arrangements for the welfare of the special needs children. That the present respondent has no way of knowing how long this situation might endure. That the present respondent has responsibilities to the special needs children under its care who board at the relevant hostel. That it cannot properly carry out those responsibilities without a resident supervisor at the said hostel.
12. This court has reached the conclusion that it would be unduly burdensome on the present respondent and severely prejudicial to it, if an indefinite postponement is granted to the present applicant. Litigants, who hold a judgment in their favour are entitled to expect that any proposed or contemplated appeal moves forward within a reasonable period. Even in extra-ordinary cases a litigant could never expect an indefinite delay in an application for leave to appeal. I believe such an indefinite delay is clearly unduly prejudicial to the present respondent. It is for this reason that I refused this application. In the circumstances, I also refuse the relief of issuing a subpoena for the present applicant's Doctor.
13. The applicant in the present application asked for costs if the present respondent opposed the application for an indefinite postponement. In my view the opposition was reasonable and ultimately successful. I can see no reason why costs should not follow the event. The

present applicant is to pay the costs of the present application for a postponement. The present applicant delivered her application for a postponement a day before this hearing. This was unreasonable. In the circumstances I think costs should be taxed on scale "B".

14. I then proceeded to the merits of the ALA itself. Ms Snyders asked for an opportunity to confer with someone who was advising her. I granted her this opportunity. When the court reconvened, she said she had set out her ALA in the papers she had filed and asked me to consider the grounds set out in her ALA papers. I have read the documents filed by Ms Snyders and have given them due consideration.
15. The first question is whether the filing of the ALA out of time should be condoned. I have considered the application for condonation and conclude that it would be in the interests of justice to grant such condonation given all the circumstances.
16. Mr Harmse, who appeared for the present respondent in this matter argued that all the grounds set out in the Notice of Application for Leave to Appeal are not competent in the sense that a factual foundation had not been laid for them in the papers filed in the eviction application. Nor had they even been foreshadowed in the answering affidavit lodged on behalf of the present applicant in the eviction proceedings. Mr Harmse submitted that a special case must be made out to adduce a new defence on appeal based on facts as opposed to a new defence based purely on a question of law. He submitted that the present applicant had not done so and is precluded from raising these new fact-based issues on appeal. Finally, Mr Harmse submitted that this issue was dispositive of the application for leave to appeal.

17. The reasons behind Mr Harmse's submissions are obvious. In motion proceedings the affidavits form both the pleadings and the evidence. The present respondent was not given an opportunity to deal with these new factual defences. The present applicant cannot make a new case on appeal based on factual considerations and which had not been fully explored in the court below.<sup>1</sup> The same considerations would perforce apply to applications for leave to appeal for the very same reasons.
18. In these circumstances, there is no reasonable possibility that another court would come to a different conclusion. Accordingly, the application for leave to appeal stands to be dismissed.
19. The final issue is who should bear the costs of the application for leave to appeal. I can find no reason why the costs should not follow the result. Having regard to the issues involved and the delays caused by the applicant, I think it would be just and equitable that the said costs be awarded on scale "B".

In the circumstances the following order is made:

- 1) The application for a postponement *sine die* together with the ancillary relief sought is dismissed.
- 2) The applicant is to pay the costs of the application for a postponement on a party-and-party basis on scale "B".
- 3) The application for leave to appeal is dismissed.
- 4) The applicant is to pay the costs of the application for leave to appeal on a party-and-party basis on scale "B".

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<sup>1</sup> Ras and Others NNO v Van Der Meulen and Another 2011 (4) SA 17 (SCA) at paras [16] and [17].

  
LG Lever  
Judge  
Northern Cape Division, Kimberley

Representation:

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| For The Applicant:  | In Person           |
| For The Respondent: | Adv J Harmse        |
| Instructed by:      | PGMO Attorneys Inc. |
| Date of Hearing:    | 22 January 2025     |
| Date of Judgment:   | 23 January 2025     |