

IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG LOCAL DIVISION, JOHANNESBURG

CASE NO: 28641/2019

DATE: 02-06-2025

DELETE WHICHEVER IS NOT APPLICABLE

(1) REPORTABLE: NO.

(2) OF INTEREST TO OTHER JUDGES: NO.

(3) REVISED.

2 June 2025

10 In the matter between

SOUTH AFRICAN COUNCIL FOR

THE ARCHITECTURAL PROFESSION

Plaintiff

and

MARELLA O'REILLY

1st Defendant

YASHAEN LUCKAN

2nd Defendant

J U D G M E N T E X T E M P O R E

20 **WILSON, J:** The plaintiff brings an enrichment action based on the proposition that unauthorised emoluments and remuneration were paid to the 1st Defendant, Ms O'Reilly on the ostensive authority of the 2nd Defendant, Mr Luckan.

The enrichment action was enrolled before me this morning, 2 June 2025. Shortly before the matter was

called, it became clear that because of the plaintiff's attorney's failure to timeously upload certain documents to Caselines, including a replication and various amended documents including an amended plea, the attorney for Ms O'Reilly had been hampered in his preparation. As I understand Mr Memani, who appeared for Mr. Luckan, his trial strategy had also been affected by the failure to upload the documents.

Mr Mofokeng, who appeared for the plaintiff, argued
10 quite strenuously that, although the plaintiff's attorney had failed to comply with the practice directions of this court requiring the documents to be uploaded to Caselines, the documents had been properly served on both the defendants' attorneys. Although he did not want to adopt this proposition when I put it to him, it appears to me that the plaintiff's case is really that the non-compliance with the practice directive made no difference to the defendants' preparedness, given that the documents had been properly served. The suggestion seems to have been that counsel for
20 the defendants ought to have known that the documents existed and that the documents could have been made available to them, had they asked.

Whether or not this is true, the bottom line is that I have an apparently good faith allegation before me that the first defendant's attorney reasonably believed that all the

documents that were relevant had been uploaded to Caselines. I also know that at least some of the documents that had not been uploaded were not served on him, but on Ms. O'Reilly's previous attorney.

Whoever is at fault, the fact is that Ms. O'Reilly's attorney is not ready to proceed today, apparently through no fault of his own. Given the nature of the relief sought, the complexity of the enrichment action, and the need to permit Ms. O'Reilly's special plea of prescription to be fully
10 and properly ventilated, it seems to me that the prejudice to Ms. O'Reilly in proceeding today plainly outweighs any prejudice to the plaintiff in postponing the matter.

Ultimately, Mr Mofokeng was instructed to agree to the postponement, and the only issue that remained between the parties was costs. The plaintiff wishes to file an affidavit in which it will adduce a factual version that in Mr Mofokeng's submission may affect the exercise of the trial court's discretion on costs.

In those circumstances, I am inclined to allow the
20 filing of the affidavit and to hold over the question of costs of the postponement for determination at trial. The plaintiff will be directed to file an answering affidavit by 13 June 2025. The defendants will be entitled to reply, if so advised, by 20 June 2025. The costs of today will then be determined at trial.

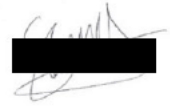
This trial action was instituted six years ago, in 2019. Notwithstanding the necessity of a postponement, it is appropriate that something be done to expedite the hearing.

Upon reading the papers it seems to me that this case is a good candidate for a Commercial Court disposition. There was no objection from any of the parties when I raised that possibility with them. None of the parties objected either to my being appointed the Commercial Court
10 Case Manager if the matter was accepted into the Commercial Court stream.

For all of those reasons, I make the following order:

1. The trial is postponed *sine die*.
2. The costs of the postponement are reserved for determination by the trial court as a discrete issue.
3. The plaintiff is granted leave to file an affidavit in answer to the postponement application, by no later than 13 June 2025, dealing only with the issue of costs.
- 20 4. The defendants may thereafter reply to that affidavit by no later than 20 June 2025.
5. The parties may approach the Deputy Judge President of this division to apply have the trial dealt with as a Commercial Court matter.
6. It is noted that none of the parties objects to the

appointment of Wilson J as the Commercial Court case
manager.

A handwritten signature in black ink, appearing to be 'Wilson J', is written over a solid black rectangular redaction box.

.....
WILSON, J
JUDGE OF THE HIGH COURT
2 June 2025