



**IN THE HIGH COURT OF SOUTH AFRICA
KWAZULU-NATAL DIVISION, PIETERMARITZBURG**

Case no: **12665/2017P**

In the matter between:

NIVERA MAHARAJ

PLAINTIFF

and

**NETCARE HOSPITALS (PTY) LIMITED
t/a NETCARE ST. AUGUSTINE'S HOSPITAL
DR SAMEER NADVI**

FIRST DEFENDANT

SECOND DEFENDANT

Coram: MOSSOP J
Heard: 10 October 2025
Delivered: 10 October 2025

ORDER

The following order is granted:

1. The trial scheduled to commence on 27 October 2025, and which is intended to run for a period of four days, is postponed sine die.
2. The first defendant is granted leave to withdraw its application, dated 19 March 2025, to compel the plaintiff to deliver further particulars and the plaintiff shall pay the costs of that application, which may be taxed on scale A.
3. The plaintiff is directed to pay the costs of the application for the postponement of the trial, and such costs may be taxed on scale C.

JUDGMENT

MOSSOP J:

Introduction

[1] This is an opposed application for a postponement of a civil trial. The trial is enrolled to commence on 27 October 2025 and is set to run for a total of four days. The first defendant, however, seeks its postponement and has brought its application to secure this relief in advance of the fixed commencement date of the trial.

A synopsis of the dispute

[2] The plaintiff was a patient of the second defendant, a practicing neurosurgeon, and was operated on by him during December 2014 at St Augustine's Hospital in Durban, that being a hospital owned by the first defendant. The purpose of the surgery was to correct a C4/C5 cervical spine prolapse. During the course of her surgery, the plaintiff suffered burns to her upper back allegedly arising out of the negligent use of diathermy equipment or the incorrect use of heated surgical sandbags employed during the course of the performance of the surgery.

[3] The plaintiff consequently issued summons against the defendants, firstly in the magistrate's court, and then latterly in the high court, claiming an amount of approximately R1,6 million from them jointly and severally. The defendants resist the action.

[4] The second defendant has not participated in this application but was represented this morning when the matter was called, and then argued, by Mr Janse van Rensburg. He indicated that the second defendant would abide the decision of this court.

The principles applicable to a postponement

[5] The principles that generally apply when a postponement is sought are the following:

- (a) The power to grant or refuse a postponement involves the exercise of a discretionary power possessed by the judge hearing the application.¹
- (b) That discretion must at all times be exercised judicially, not capriciously, and for substantial reasons.²
- (c) All relevant facts and principles must be thoroughly considered and evaluated.³
- (d) The application for a postponement must be made timeously, as soon as the circumstances which might justify an application become known to the applicant.
- (e) The application must always be bona fide and must not be used as a tactical manoeuvre for the purpose of obtaining an advantage to which the applicant is not legitimately entitled.
- (f) The judge hearing the application must consider whether any prejudice that is likely to be suffered by the respondent could be assuaged by an appropriate costs order. In assessing the issue of prejudice, the judge should weigh the prejudice which will be caused to the respondent if the postponement is granted against the prejudice which will be caused to the applicant if it is not.

[6] It is, furthermore, settled law that an application for a postponement is an indulgence being sought from the court and no party may claim a postponement as of right.⁴ To persuade a court to grant that indulgence, a complete explanation of the necessity for the postponement must be provided and the court, ultimately, must be persuaded that it is in the interests of justice to permit the postponement.

Judicial case management

[7] The parties, duly represented, appeared at a prescribed judicial case management hearing (the hearing) before an acting judge of this division, Gwagwa AJ, on 6 March 2025. What occurred at the hearing has been transcribed by the first defendant and a copy of that transcript has been attached to the first defendant's founding affidavit.

¹ *Myburg Transport v Botha t/a SA Truck Bodies* 1991 (3) SA 310 (Nm).

² *Joshua v Joshua* 1961 (1) SA 455 (G) at 457D.

³ *Prinsloo v Saaiman* 1984 (4) SA 56 (O).

⁴ *National Police Service Union and Others v Minister of Safety and Security* 2000 (4) SA 1110 (CC) at para 4.

[8] At the hearing, the plaintiff's attorney, Mr Pieterse, appeared, as he does today, and urged that the action be certified as being trial ready. Mr Pieterse made the following submission to the acting judge:

'It seems that there is no appearance on behalf of the second defendant, but it is the plaintiff and the second defendant are *ad idem* that the matter should ... be certified trial ready.'

[9] From this it is safe to assume that Mr Pieterse was prepared to take the matter to trial and must, therefore, have had insight into the state of the case that he was to present to the court.

[10] The first defendant was represented at the hearing, as it is today, by Mr Swain, and he advanced several reasons to the acting judge why the matter was not ready to be certified trial ready. Firstly, he submitted that there had not been proper compliance with Uniform rule 37. While there had been rule 37 conferences in the distant past, a further such conference had to be convened closer to the date of trial but had not been. Secondly, he submitted that the plaintiff had refused to provide certain further particulars requested from her by the first defendant and that the first defendant was, as a consequence, required to bring a formal application to compel such particulars. Because the information sought had not been provided, the first defendant had not been able to instruct its experts and needed time to do so. Thus, so it was submitted, the matter was palpably not ready for trial.

[11] Mr Pieterse, however, placed strong emphasis on the fact that the unfortunate event that had given rise to the plaintiff's action had occurred approximately ten years prior and forcefully argued that the plaintiff was being kept from having her day in court by the conduct of the first defendant.

[12] During the course of the hearing, the following interaction between the acting judge and Mr Pieterse occurred:

GWAGWA AJ: Are there any expert reports that need to be filed by the plaintiff?

MR PIETERSE: Pardon, M'Lord?

GWAGWA AJ: Are there any expert reports that need to be filed by the plaintiff?

MR PIETERSE: No, M'Lord the plaintiff filed and the second defendant filed. It is only the first defendant who did not file their pleading ...'

[13] In addition, Mr Pieterse made the following submission on the first defendant's request for further particulars:

'Just briefly, M'Lord after 12 years my learned friend cannot say to Your Lordship that if Your Lordship today certify the matter trial ready and then order that they may bring an application to compel should they so wish, what prejudice can there be to the defendant, because the Court will hear the application and say well, I compel you to deliver those further particulars or the Court will say you are not entitled to those particulars, but the matter can still proceed to trial a year and a half of waiting from now, because that is what we are looking at.'

[14] The acting judge was apparently persuaded by Mr Pieterse's argument about the delay in getting the matter to trial and granted the following order:

1. The matter is certified trial ready and the Registrar is directed to allocate 7 days for the hearing of the matter.
2. The defendant is to bring an application to compel further particulars within 10 days.
3. The parties are directed to hold a further pre-trial conference on or before one (1) month before the allocated trial date.
4. Costs of Judicial Case Management shall be costs in the cause.'

(The order).

[15] Finally, during the course of the hearing, Mr Pieterse made the following submission:

'Your Lordship may include that if it appears that the parties will not be trial ready a month before the trial that we will immediately inform the registrar to remove the matter from the roll.'

[16] Mr Swain did not believe it necessary to incorporate this in the order that the acting judge eventually issued.

The declaration of trial readiness

[17] A declaration of trial readiness is a definitive statement that all preliminary issues in a trial have been resolved and that the trial is free from any obstacles that could prevent it from commencing. In other words, it signifies that a trial is ready to commence immediately on the day allocated for its commencement and it will, *ceteris paribus*, run continuously until it is completed. Such a declaration is a necessary step in securing the administrative allocation of a trial date by the registrar.

[18] It is a declaration of some importance, for it permits the parties to commence their final preparations on the true issues existing between them and it allows them to begin securing the attendance, and preparation, of their witnesses once a trial date has been allocated by the office of the registrar.

[19] It goes without saying that such a declaration should only be made when there are no interlocutory or ancillary matters outstanding.

The matter was not trial ready

[20] Without intending any disrespect to the acting judge, the matter was clearly not trial ready on 6 March 2025.

[21] The first inkling that this was the case is to be found in the fact that the parties were not *ad idem* about the status of the matter. Ordinarily, the parties agree when a matter is ready to be placed before a judge for determination. However, in this instance, Mr Pieterse claimed that it was trial ready while Mr Swain argued that it was not. That should have been the first red light that alerted the acting judge. A further indication that it was not trial ready may be discerned from the wording of the order. It required other things to be done before the trial commenced: the first defendant had to bring its application to compel the delivery of the further particulars that it sought from the plaintiff and a further rule 37 conference had to be convened.

[22] In my view, it was not possible to predict how long the application to compel the further particulars requested would take nor was it possible to predict when a trial date would be allocated. It was, in the circumstances, unwise to order the matter to trial whilst the issue of the application to compel had not been put to bed.

[23] But there was a further reason that the matter could not be legitimately considered to be trial ready. This, however, was peculiarly within the knowledge of Mr Pieterse. He did not disclose it to the acting judge, despite the specific interaction highlighted earlier in this judgment between himself and the acting judge regarding the plaintiff's experts' summaries.

[24] In a letter written by Mr Pieterse to the first defendant's attorney, Ms Domingos, on 24 April 2025, a month and a half after the judicial case management hearing before Gwagwa AJ, Mr Pieterse made the following disclosure:

- '2. All the expert's reports filed in this matter, unfortunately became stale. Some of the facts, assumptions and opinions are no longer relevant and/or outdated.
- 3. Kindly take note that the Plaintiff, for the aforesaid reason, will file addendum reports.
- 4. The Plaintiff will not be calling Dr Rajah or any other orthopaedic surgeon as we believe that the injury sustained and its sequelae are not related to any orthopaedic injury or the previous surgery undergone to the cervical spine.
- 5. ...
- 6. We will shortly file the necessary addendum reports and may amend the particulars of claim to bring same in line with the expert evidence if need be.'

[25] Given the brief lapse of time between the date of this letter and the hearing at which Mr Pieterse had stated that the matter was trial ready, it is inconceivable that Mr Pieterse was not aware of the difficulties that he had with the plaintiff's expert summaries. Yet, he did not mention this at all when discussing the plaintiff's expert summaries with the acting judge. Nor did he mention to the acting judge, as stated in his letter to Ms Domingos, that some of the facts, assumptions and opinions expressed in those 'stale' summaries were now not relevant or had become outdated. This morning, he indicated that he assumed everyone knew that the plaintiff's expert summaries had gone 'stale' because of the age of the matter. This included the acting judge. That is not an assumption that he was entitled to make in my view.

[26] The failure to mention the difficulties with the plaintiff's expert's summaries was a serious omission on the part of Mr Pieterse. Judges do not have the same level of intimacy with a matter that the legal practitioner handling the matter has, nor does he have the time to acquire that intimacy. Assurances given by a legal practitioner to a judge must be capable of being accepted and relied upon by the judge. To state that all expert reports had been delivered, which on the face of it appears to be true, but to omit to mention the fact that there were difficulties with those expert summaries was not to place the full facts before the acting judge. It is difficult to avoid the conclusion that it was intended to mislead the acting judge into granting the order that Mr Pieterse sought. Had the acting judge been aware that further, changed reports still had to be

delivered, I have severe reservations about whether he would have been prepared to certify the matter as being trial ready. This because the prospect of further investigations having to be conducted by the first defendant in the light of the promised amendments to the expert reports would be an obvious obstacle to the trial proceeding.

[27] That, in the result, is precisely what has occurred. The amended expert reports delivered by the plaintiff rendered the first defendant's request for further particulars redundant and led to the first defendant requiring the plaintiff to be assessed by its own expert neurologist in Pretoria. Such an examination had to be conducted because the amended summaries delivered appeared to indicate that the plaintiff had apparently suffered an unexpected deterioration in her condition. Naturally, this would have to be fully and thoroughly investigated by the first defendant. The final report from the expert instructed by the first defendant is yet to be received and the first defendant is not prepared to proceed without it, or without other expert reports that it is now required to obtain.

[28] Finally, the prediction by Mr Pieterse that a trial date would only be allocated a year and a half into the future was entirely inaccurate. A trial date was allocated within months of the judicial case management hearing. There has accordingly not been sufficient time for the first defendant to properly prepare its defence.

Analysis

[29] Having heard submissions from counsel this morning, I stood the matter down to consider my decision.

[30] It appears to me that the first defendant complied with its obligation to bring its application for a postponement immediately it became apparent to it that it would not be ready by the date of trial. In doing so, it attracted scathing criticism from Mr Pieterse, who suggested that it was brought prematurely and submitted that it should have been brought on the first day of trial. When considering the matter before the hearing I formed the view that Mr Pieterse must not be familiar with the principles applicable to an adjournment discussed earlier in this judgment. In that I was wrong: he is, indeed, familiar and acknowledged that he knew that it was incumbent upon

an applicant for an adjournment to bring the application at the earliest opportunity. That being the case, I do not understand his criticism of the first defendant's legal representatives.

[31] In bringing its application, the first defendant has provided an extremely detailed and fact rich explanation of its reasons for doing so. The following paragraphs from the first defendant's replying affidavit succinctly explain why the application is necessary:

'19.6.1 There was a real, or appreciable, likelihood that it would not be able to compel an answer to its existing request for further particulars or (indeed) that its ability to continue with the application which it had already instituted in that regard had come to be frustrated; and (perhaps more importantly) that

19.6.2 New, and fundamentally important, matters had been revealed by way of the new expert reports which had been delivered on behalf of the plaintiff, that these would need to be investigated, and that these investigations might not be completed in time.'

[32] That explanation satisfies me that the application is bona fide, despite Mr Pieterse's frequent submissions in this answering affidavit that the first defendant's legal representatives have acted in a mala fide fashion. I reject all of those submissions.

[33] The plaintiff alleges that too much time has passed since the events of which she complains occurred. While it is so that a significant period of time has passed since the plaintiff suffered her burns, I am not convinced that this can only be attributed to the conduct of the first defendant. The plaintiff, for example, was examined by an expert, a Dr Rajah, who prepared a report that, on the face of it, did not appear to assist the plaintiff's claim. It is perhaps for this reason that Mr Pieterse indicated in his letter of 24 April 2025 to Ms Domingos that Dr Rajah would no longer be called by the plaintiff. The point of referring to this is that Dr Rajah's report was only delivered to the first defendant some two years after it was compiled. A further example of the plaintiff's apparent foot dragging is evident in the arrangements regarding a rule 37 conference. One was scheduled for 6 December 2022. Upon receipt of the first defendant's list of questions that it intended to pose at the conference, Mr Pieterse, ironically, postponed

the conference, indicating that the plaintiff required an opportunity to properly respond to the questions. He only provided the plaintiff's responses on 20 April 2023.

[34] On the known facts, this matter is clearly not now trial ready, and it was not trial ready on 6 March 2025. Mr Pieterse ought to have recognised this. It therefore should not have been submitted by him to the acting judge that it was trial ready. Mr Swain's submissions that the matter was not trial ready were accurate and sensible, even though he may not have been aware of the issues relating to the outdated expert reports, and that argument ought to have carried the day when the matter served before the acting judge.

[35] This should be a salutary lesson to all: a matter should only be requested to be certified as being trial ready, and should only be certified as being trial ready, when it is, indeed, trial ready. A matter is not trial ready when there are still preliminary issues that need to be resolved. Practitioners should not, furthermore, withhold relevant information from the judge required to certify that the matter is trial ready.

[36] The greater prejudice will be experienced by the first defendant if the application is refused. The plaintiff will not be prejudiced at all. I am accordingly satisfied that the interests of justice require me to grant the application for a postponement of the trial.

Costs

[37] The first defendant has sought an order that the costs associated with its now redundant application to compel the delivery of further particulars be paid by the plaintiff. Its reasoning is that while the plaintiff opposed its application, it never delivered an answering affidavit to that application and then delivered the amended expert reports which had the effect of rendering redundant the request for further particulars. I am inclined to grant that order on those facts.

[38] As regards the costs of the application for a postponement, the party seeking the postponement ordinarily is directed to pay those costs because it is, as previously explained, an indulgence that is sought. I am, however, of the view that such an approach is not appropriate in this instance. That the postponement is now being

sought is largely because of the conduct of the plaintiff's legal representative in insisting that the matter was trial ready, when in truth it was not, and in Mr Pieterse not informing the acting judge of the difficulties that he had with his own expert summaries. When it was pointed out to Mr Pieterse by the first defendant's attorney that the delivery of the amended expert reports dictated that the first defendant would have to conduct further investigations, it ought to have been obvious to Mr Pieterse that the trial could not proceed as scheduled. Mr Pieterse acknowledged this morning that he had received a request for a postponement in May 2025, but he declined to accede to the request. This would appear to fly in the face of the assurance that he gave to the acting judge, already mentioned. Mr Pieterse should have recognised this fact and consented to the postponement. He did not do so.

[39] This morning, Mr Pieterse indicated that he accepted that the matter could not proceed on 27 October 2025 by virtue of the fact that the first defendant is not ready for trial. I was astonished to hear this and inquired why I was therefore called upon to hear the application. I am afraid that I did not understand Mr Pieterse's reply.

[40] All of these facts, in my view, changes the matter and renders the usual costs order inappropriate.

[41] It is regrettable that something further needs to be said about the conduct of Mr Pieterse. Besides the shortcomings to which I have already referred in this judgment, which I regard as being both serious and unacceptable, it appears to me that he has injected an unpleasant, and unnecessary, aggressive tone into the plaintiff's answering affidavit to which he has personally deposed. As previously mentioned, he has frequently alleged mala fide conduct on the part of the first defendant's legal representatives without adducing any evidence to support that conclusion. These ad hominem attacks have no place in legal proceedings.

[42] Mr Pieterse would be well advised to recognise that the dispute in which he performs services on behalf of the plaintiff is not his dispute: it is the dispute of his client. Despite his mentioning his lengthy involvement and experience in the legal profession, he unfortunately appeared for the plaintiff at the hearing and then deposed to the answering affidavit in this application in which he was required to explain, justify,

and support his own conduct. It is not desirable for this to occur,⁵ for where counsel becomes a witness in a matter in which he appears:

‘...he compromises his capacity to give the conduct of the case his objective professional attention.’⁶

[43] In addition, Mr Pieterse did not deliver any heads of argument or a practice note on behalf of the plaintiff. When asked why this was the case this morning, he stated that he forgot to file those documents. My general dissatisfaction with this conduct will be expressed in the costs order that must follow.

Order

[44] I accordingly grant the following order:

1. The trial scheduled to commence on 27 October 2025, and which is intended to run for a period of four days, is postponed sine die.
2. The first defendant is granted leave to withdraw its application, dated 19 March 2025, to compel the plaintiff to deliver further particulars and the plaintiff shall pay the costs of that application, which may be taxed on scale A.
3. The plaintiff is directed to pay the costs of the application for the postponement of the trial, and such costs may be taxed on scale C.

MOSSOP J

⁵ ‘Before you act, it’s Prudence soberly to consider; for after Action you cannot recede without dishonour: Take the Advice of some Prudent Friend; for he who will be his own Counsellour, shall be sure to have a Fool for his Client’, by W De Britaine *Humane Prudence, or, The Art by which a Man May Raise Himself and Fortune to Grandeur* (1682) at 57.

⁶ *Beyleveld v Patel NO and others* [2006] ZAECHC 66 para 16; *Director of Public Prosecutions KwaZulu-Natal v Mzanywa and Another* [2023] ZAKZPHC 108 para 4.

APPEARANCES

Counsel for the plaintiff:

Mr K Pieterse

Instructed by:

EVN Legal Practitioners
69 Kenneth Kaunda Road
Athlone
Durban North
319 Bulwer Street

Locally represented by:

Venns Attorneys
30 Montrose Park Boulevard
Victoria Country Club Office Estate
198 Peter Brown Drive
Pietermaritzburg

Counsel for the first defendant:

Mr M Swain

Instructed by:

Barkers
Suite 102, Level 1 Ridge 6
20 Ncondo Place
Umhlanga Ridge

Locally represented by:

Cajee Setsubi Chetty Incorporated
195 Boshoff Street
Pietermaritzburg

Counsel for the second defendant:

Mr N A Janse van Rensburg

Instructed by:

MacRobert Attorneys

3rd Floor

Suite 301

Ridge 6

20 Ncondo Place

Umhlanga Ridgeside

Locally represented by:

J Leslie Smith Attorneys

332 Loop Street

Pietermaritzburg