



**IN THE HIGH COURT OF SOUTH AFRICA
(EASTERN CAPE DIVISION, MTHATHA)**

CASE NO.: 1256/2021

Reportable	NO
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In the matter between:

FANISWA NONCOLELA

Plaintiff

and

MINISTER OF POLICE AND ANOTHER

Defendants

RULING

IN RE: APPLICATION FOR A POSTPONEMENT

CENGANI- MBAKAZA AJ:

[1] These are action proceedings and midway through the trial, the plaintiff approached this court through a notice of motion seeking for a postponement of the matter *sine die*, with costs reserved for determination at the conclusion of the trial.

[2] The Mthatha High Court standard practice is to hold the roll call in the mornings, with the trial judge receiving the file on the same morning as the trial. The trial judge would then examine the papers and subsequently arrange a time to commence the matter with the parties involved. This practice is no different from what occurred on 13 October 2025 in this matter.

[3] Before the commencement of the trial, I convened a meeting with the parties in chambers, where I enquired about their readiness to proceed with the case. In that meeting I also expressed concerns regarding the potential challenges associated with picking up a partly- heard matter.

[4] Notwithstanding the parties' assurance regarding the readiness of the case, the trial was plagued with challenges stemming from the plaintiff's readiness to present relevant evidence. In his founding affidavit, the plaintiff's attorney appears to diminish the delay they caused in these proceedings. As noted, the objections to the presentation of hearsay testimony and the documents are a matter of record. I will however, not elaborate further on this point, as it is not my intention to address the merits of this case.

[5] Considering numerous 'stand downs' which emanated from the objections raised, during the discussion in chambers, I expressed my discomfort with the manner in which the plaintiff was handling the matter. The crux of the issue was the plaintiff's consistent display of unpreparedness, evident in the late arrival of the witness on day two and the overall presentation of the case. The fact that the plaintiff seems to defend all those delays in the founding affidavit is puzzling.

[6] Another delay can be attributed to the plaintiff's uncertainty regarding whether to sue Minister of Police or both the Minister of Police and Mr Buhle Mayishe. Again, it is perplexing that the plaintiff seeks to apportion the blame, considering the ambiguity in the citation of the parties throughout the court documents.

[7] Given the plaintiff's status of being *dominis litis*, the plaintiff ought to keep a proper check of the court papers, ought to know who they are citing, and if a mistake occurred take responsibility for it rather than shifting the blame. In this instance, it is a matter of record that the ambiguity in citation of the defendants led to withdrawal of the claim against the third defendant.

[8] It is a fact that the ensuing debate over the issue of citation and representativity added to the delays in the proceedings. I am highlighting this because after the debate over the citation of the parties and representativity, the plaintiff requested a postponement of the case to obtain certain information which was only known to them. Notably, Ms Da Silva SC stated her representation of the first and second defendants, a fact that was known since August 2024. Another reason advanced was that one of the defendants' counsel was excused to conduct a research, but it is a matter of record that this excusal did not halt the proceedings.

[9] Taking all these factors into account, the five -day allocation for the presentation of evidence was adequate. Contrary to the argument raised by the plaintiff's attorney in his founding affidavit, the merits of the case would have been concluded on day five had it not been for those delays including the events of 15 October 2025 . These events further complicated the completion of the merits and exacerbating the issues that were already apparent in the plaintiff's handling of the matter.

[10] On 15 October 2025, before the commencement of the testimony of the third witness, the plaintiff introduced a document and sought to lead evidence, prompting the defendants to object due to lack of prior knowledge. After the defendants' request to examine the document, it became apparent that the authenticity of the document was disputed. Despite the plaintiff's attempt to address the court regarding the document's discovery, in particular Rule 35(6) of the Uniform Rules of Court, it is clear that the truth and correctness of the

document in question including the authenticity was not admitted during the pre-trial conference or at any stage of the trial proceedings.

[11] Therefore, if the authenticity of the document is disputed as it does in this case, the plaintiff will likely need to present evidence to support its authenticity if they intend relying on it. Contrary to what the plaintiff's attorney alludes in the founding affidavit, the application for a postponement is not based on the parties' underestimation of the trial's duration and the delays by the defendants. The primary reason for the application for a postponement stems from a disputed document. This fact is corroborated by the plaintiff's counsel, who admitted needing four months to engage experts to verify the authenticity of key documents. It is undeniable that these issues should have been addressed during a pre-trial conference. Again, the delay appears to stem from the plaintiff's counsel's preparedness, as evidenced by the facts presented.

[12] This court acknowledges that the discretion to grant or refuse a postponement lies with it and must be exercised judiciously. By principle, a discretion to postpone should not be exercised capriciously or upon wrong principle, but for substantial reasons. In other words, the decision to grant a postponement should be grounded in sound reasoning and a thorough consideration of the relevant factors. In *Psychological Society of South African v Qwelane*¹, Nkabinde ACJ held that:

‘postponements are not merely for the taking. They have to be properly motivated and substantiated...and when considering an application for a postponement a court has to exercise its discretion whether to grant the application. It is discretion in the true or narrow sense- meaning that, so long as it is judicially exercised, another court cannot substitute its decision because it disagrees. The decision to postpone is primarily one for the first instance court to make.’

[13] As evident from the discussion above, it is well-established that an indulgence is a privilege that must be earned, it does not come as a right. In

¹ 2017 (8) BCLR 1039 (CC).

Persadh & Another v General Motors South Africa (Pty) LTD (Persadh)², Plasket J (as he then was) set out the principles regarding the application for a postponement. These are paraphrased as follows:

1. The party must demonstrate good cause as the postponement interferes with the opponent's rights and the interest of justice.
2. The court has a discretion to grant or refuse a postponement.
3. Postponements should be granted if the reasons for delay are fully explained, not tactical and justice requires additional time.
4. Potential prejudice to either party must be considered.
5. Typically, the party responsible for the postponement must bear the wasted costs.

[14] Given the submissions, as well as the plaintiff's approach as evident in the papers filed, the plaintiff's attorney appears to be demanding or exhibiting some entitlement for the granting of a postponement rather than applying for one, which is inappropriate. This is evident from the incorrect facts presented where it was stated that the defendants insisted that the plaintiff should file papers to pursue the application for a postponement. The plaintiff's counsel has failed to take full responsibility for their own unpreparedness, particularly regarding the authenticity of the disputed document, an issue that was known since the pre-trial stages.

[15] Considering all the circumstances presented in this ruling, it appears that this application is tainted with *malafides*, as demonstrated by the grounds upon which a postponement is sought and the handling of the matter which is clearly marred by the delays. Notwithstanding the plaintiff's assertion in the replying

² 2006(1) SA 455 (SE).

affidavit that they caused no delays, my observation of the proceedings suggests otherwise.

[16] It needs emphasis that in the ordinary course of events this application would not have warranted a consideration. I agree with the defendants that a postponement will not ordinarily be granted where the circumstances are self-created. The plaintiff's counsel's unpreparedness is prejudicial to both the defendants and the plaintiff in person. To rectify the situation, the interests of justice require that the postponement be granted, despite the application's shortcomings. This decision is motivated by the practical implications of refusing the postponement, given the unavailability of a closer date, which is caused by the plaintiff's glaring unpreparedness to proceed with the matter this week.

[17] I now deal with the issue of costs. Ordinarily, the successful party would be entitled to costs. However, it is well-established that the awarding of costs is the matter within the court's discretion, which must be exercised in a judicial manner.

[18] While it may seem repetitive, the plaintiff's attorney's *malafides* are apparent in the motivation for a postponement. I agree with the defendants that when the party's difficulties stem from neglect, inadequate preparation and so on, such party must bear the consequences of their own fault. Reserving the issue of costs for future determination would prejudice the defendants. The plaintiff's submission that the defendants should be liable for costs is inconsistent with the principles set out in *Persadh (supra)*.

[19] Resultantly, I make the following order:

- 1. The application for a postponement is granted. The date for future consideration of the case shall be arranged with the court, failing which the court will direct that the matter be set down for hearing.**

2. The plaintiff shall pay costs on scale B, that includes the costs of the trial dates of the 16 and 17 October 2025 as well as costs of two counsel where so employed.

N CENGANI-MBAKAZA

ACTING JUDGE OF THE HIGH COURT

APPEARANCES:

Counsel for the Plaintiff : Adv Machaba SC with Adv Mantyi-Mfino

Instructed by : F. Ntanyiya & Associates
MTHATHA

Counsel for the Defendants : Adv Da Silva SC

Instructed by : STATE ATTORNEY
MTHATHA

Application heard on : 21 October 2025

Ruling delivered on : 21 October 2025