

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA

LIMPOPO DIVISION, POLOKWANE

CASE NO. 4224/2025

(1)	REPORTABLE: <u>YES/NO</u>
(2)	OF INTEREST TO THE JUDGES: <u>YES/NO</u>
(3)	REVISED:
DATE: <u>19/1/25</u> SIGNATURE: 	

In the matter between:

MC TEE HOLDINGS

APPLICANT

And

MEC FOR SOCIAL DEVELOPMENT,

LIMPOPO PROVINCE

1ST RESPONDENT

THE DEPARTMENT OF SOCIAL DEVELOPMENT,

LIMPOPO PROVINCE

2ND RESPONDENT

HEAD OF DEPARTMENT OF SOCIAL

DEVELOPMENT, LIMPOPO PROVINCE

3RD RESPONDENT

In Re:

MEC FOR SOCIAL DEVELOPMENT,

LIMPOPO PROVINCE

1ST APPLICANT

THE DEPARTMENT OF SOCIAL DEVELOPMENT,

LIMPOPO PROVINCE

2ND APPLICANT

HEAD OF DEPARTMENT OF SOCIAL

DEVELOPMENT, LIMPOPO PROVINCE

3RD APPLICANT

And

LELEDU SECURITY SERVICES CC

1ST RESPONDENT

PETKAY TRADING ENTERPRISES (PTY) LTD

2ND RESPONDENT

OMPWA TRADING ENTERPRISE CC

3RD RESPONDENT

GIJA SECURITY SERVICES

4TH RESPONDENT

NKARI SECURITY AND PROJECTS	5 TH RESPONDENT
MAREBOLE SECURITY SOLUTIONS	6 TH RESPONDENT
MC TEE HOLDINGS	7 TH RESPONDENT
PAPA MIKE PROJECTS	8 TH RESPONDENT
BRAVOSPAN 90 CC	9 TH RESPONDENT
VHUTAKA GENERAL TRADING	10 TH RESPONDENT
TUBATSE SECURITY SERVICES	11 TH RESPONDENT
MPHO JEANY MOKHUDU	12 TH RESPONDENT
PHETOLO RAMAKEPE	13 TH RESPONDENT
ELICIA VUKEYA	14 TH RESPONDENT
NYAUME PATRICK THOBEJANE	15 TH RESPONDENT
POLE ALFRED SEOPA	16 TH RESPONDENT
MPHAKI DANIEL MASEMOLA	17 TH RESPONDENT
JOSEPH TSHISIKWANE	18 TH RESPONDENT
DESMOND MAHOPO	19 TH RESPONDENT

Delivered: This judgment is handed down electronically by circulation to the parties through their legal representatives' email addresses. The date for the hand-down is deemed to be _ November 2025.

JUDGMENT

Masilo AJ

Introduction

[1] On 16 April 2025 the Applicants launched an urgent application for the review and setting aside of Tender DSDP 05/22-22/22 awarded to the first to eleventh Respondents. The application was set to be heard on 3 June 2025. The matter was accordingly opposed.

[2] On 30 May 2025 the Applicants apparently served by email a copy of an application for admission of explanatory affidavit of one Nanda Anna Ndalane as evidence in the main application. This application was also allegedly loaded on case line at 02h00 of 3 June 2025. In paragraph 3 is a prayer on costs, which interestingly reads: -

“3. Directing any of the Respondents who successfully opposes this application, to pay the Applicants’ costs, inclusive of the payment of two counsel on an attorney and client scale.”

- [3] On 3 June 2025 at 02h00 the application was loaded on caselines. The matter was then removed from the roll as it had become opposed.
- [4] On 8 August 2025, this matter appeared before Nkoana AJ who decided that the matter is removed from the roll and costs reserved. The court directed that the parties approach the Judge President for a special allocation that the Rule 30(1) application be heard first.
- [5] On August 2024, the Applicants and the 7th Respondent wrote to the Judge President in which they requested a preferential date for hearing of the Rule 30. On 26 August 2025 the Office of the Judge President allocated the date of 25 September 2025 as a date for hearing of the Rule 30(1).
- [6] The 7th Respondent served and filed a Notice of Set down of the hearing of the Rule 30(1) application accordingly. It is important to note that at the top left end of the Notice of Set Down, the 7th Applicant inserted the words "In the Rule 30(1) application. On the 2nd page in between the tramlines the Notice of set down read: -

"

Notice of Set Down

Be Pleased to take notice ...”

- [7] This Notice of Set Down was served on the parties by email. On 25 September 2025 at 03h00 the Applicants filed a Practice Note, which on page 5 para 2-4 read as follows-

- “2. *Dispensing with the forms and service provided for in the Rules of the above Honourable Court and allowing the matter to proceed as one of urgency in terms of the Rule 6(12) and condoning any non-compliance with the Rules by the Applicant;*
3. *Condoning non-compliance with the Practice Directive of the above Honourable Court;*
4. *Condoning the service of the application on the Respondents by way of e-mail address or other appropriate means of service other than by the Sheriff/Deputy Sheriff of the High Court (“the Sheriff”);”*

- [8] Further, the Applicants filed a Practice Note, which read on page 6 para 5 which read as follows -

“Directing the First to the Eleventh Respondents to pay the Second Applicant’s costs on an attorney and client scale which

is to include the costs of the employment of Senior and Junior Counsel,”

[9] On 25 September 2025, pursuant to the Notice of Set Down, and the Practice Note, the 1st to 3rd Respondents, 6th Respondent, 11th Respondent, 14th Respondent, 16-19th Respondent appeared in court, along with the Applicants and 7th Respondent who are in the Rule 30 (1) application.

[10] The 1st to 3rd Respondents, 6th Respondent, 11th Respondent, 14th Respondent, 16-19th Respondent sought costs for the day, given the fact that they were not parties in the Rule 30(1) but came specifically because costs orders on an attorney and client scale was sought against them, despite not being party to the interlocutory applications.

[11] The 1st to 3rd Respondent also lamented that they were not served with the application by the Applicants for admission of the “Explanatory Affidavit”, which is the subject of the Rule 30(1). The Applicants insisted that the 1st to 3rd Respondents were served on 30 May 2025. Further, that they were aware of the fact that there is the application by the Applicants for admission of the “Explanatory Affidavit”, since 3 June 2025 alternatively since 8 August 2025.

[12] The court had to direct that a service affidavit and proof of service by email be made available to the court at 14h00. Further, that the 1st to 3rd Respondents be served with a copy thereof for them to respond and be able to answer for their representations. The court was at 14h00 advised that apparently, the service of the application by the Applicants for admission of the "Explanatory Affidavit", was served by email at the incorrect email address which does not belong to the 1st to 3rd Respondents' attorney Ms. Judy Nchabeleng. Further, that only at 14h09 on 25 September 2025 was the application by the Applicants for admission of the "Explanatory Affidavit" served on the 1st to 3rd Respondents.

[13] The Applicants sought to persist on the fact that despite the non-compliance with Rule 6(5)(a), the 1st to 3rd Respondents were aware of the application and therefore, they waived their right to object and the court must proceed to hear the Rule 30(1) application.

[14] The 7th Respondent, the 1st to 3rd Respondent insisted that the matter be removed or postponed so as to avoid prejudice to any of the parties with the Rule 30(1) proceeding without affording the 1st to 3rd Respondents their right to consider the application by the Applicants for admission of the "Explanatory Affidavit". Further, that on the question of

costs, that the parties are out of pocket as a result of the conduct, failure and/or omission of the Applicants to comply with the Rules of court.

[15] It is trite that the Uniform Rules of court read with the Practice Directives of this court govern the conduct of proceedings. Of paramount importance is that Rule 6(5)(a) is crafted in peremptory terms and enjoins an applicant to serve the true copy of the notice and all annexures thereto.

[16] I have noted that in the Rule 30(1), one of the cause of complaint is that the 4 annexures in the Explanatory Affidavit of Ms. NA Ndalane sought to be admitted were not attached. This omission invites the provisions of Rule 6(5)(a).

[17] There is a pattern of lackadaisical dealing with this matter on the part of the Applicants' attorney. The service of the application, the loading on case lines, annexures not attached to this application by the Applicants for admission of the "Explanatory Affidavit".

[18] It is trite that non-compliance with the Rules of Court, renders the process susceptible to being assailed by the aggrieved party in terms of the Uniform Rules of Court. It is undisputable that the application by the

Applicants for admission of the "Explanatory Affidavit" was not served on all parties prior to 25 September 2025. The 1st to 3rd Respondents were only served at court at 14h09 on 25 September 2025. This is the main and real reason why the matter (I say matter, specifically looking at the application by the Applicants for admission of the "Explanatory Affidavit" and the 7th Respondent's Rule 30(1) application) was not able to proceed and not heard as set down.

[19] The 1st to 3rd Respondents, 6th Respondent, 11th Respondent, 14th Respondent, 16-19th Respondent appeared in court asking for costs, as they were lugged before court by the Applicants and the 7th Respondent. The most important part being the prayer for costs on attorney and client scale, including costs of two counsel against the 1st to 11th Respondent. The 14th Respondent's Counsel Mr. Baloyi conceded that he came on a watching brief as no costs were sought against his client.

[20] As indicated above that the Applicants have been remiss in the handling and management of this matter, resulting in the Respondents being before court on 25 September 2025 so as to avoid a punitive costs order which they were fore-warned would be asked for against anyone who successfully opposes the application for the Applicants to file an "explanatory Affidavit", in the Notice of Motion. Further, they were fore-warned in the Practice Note that costs will be sought against them. This

is against the backdrop that the Applicants contend it was an error to include that prayer in the Practice Note.

[21] It is undeniable that the 1st to 3rd Respondents, 6th Respondent, 11th Respondent, 14th Respondent, 16-19th Respondent incurred costs occasioned by 25 September 2025 appearance. The Applicants dispute that the 1st to 3rd Respondents, 6th Respondent, 11th Respondent, 14th Respondent, 16-19th Respondent, needed to prepare and read some 3000pages, as the main application is not before court for consideration, what is before court is the small interlocutory applications which do not constitute even 100pages.

[22] The courts have always held that a Counsel briefed to appear to ask for a postponement, must not assume that the postponement would be granted and not prepare to proceed in the main. In such an instance, the counsel briefed to be in court must prepare as if the matter is to proceed. For that reason, it is not inconceivable for counsel for the Respondents to claim that they needed to prepare themselves to come to court, given that the Rule 30 application was to be heard and if dismissed then the application for leave to file a Supplementary Affidavit would have to be heard.

[23] It is therefore not unpalatable for the 1st to 3rd Respondents, 6th Respondent, 11th Respondent, 14th Respondent, 16-19th Respondent to claim to have had to prepare themselves for court to oppose the prayer for punitive costs against them. In order to do so they would have needed to be acquainted with all the papers including the main application.

[24] The common denominator in everything that took place on 25 September 2025, and that brought the 1st to 3rd Respondents, 6th Respondent, 11th Respondent, 14th Respondent, 16-19th Respondent to court, as well as to result in the postponement of this matter was the Applicants, either by action or omission.

[25] It is therefore inexorable that the Applicants are the cause of the 1st to 3rd Respondents, 6th Respondent, 11th Respondent, 14th Respondent, 16-19th Respondent appearance in court on 25 September 2025. Further, it is inescapable that failure to serve the 1st and 3rd Respondent with the application to admit the "Explanatory Affidavit", which was the subject of the Rule 30(1) application capitulated the hearing of the Rule 30(1) by the 7th Respondent and caused the postponement of this matter.

[26] I therefore find that the Applicants are the cause of the 1st to 3rd Respondents, 6th Respondent, 11th Respondent, 14th Respondent, 16-19th Respondent appearance in court, and cannot escape the consequence of the inconvenience caused and resultant costs incurred by the listed Respondents. It is only appropriate that the Applicants are ordered to pay the costs occasioned, being the costs of 1 day for preparation and the costs of court appearance on 25 September 2025.

[27] With regard to the postponement, it is trite that he how seeks indulgence must pay the costs. It is the Applicants who seek the indulgence to comply with Rule 6(5)(a) for their failure to serve the Applicants' application to admit an "Explanatory Affidavit" upon the 1st to 3rd Respondents. Further, that non-compliance with the Rules of Court, is to be visited with an appropriate order of costs.

[28] As set out in LAWSA,¹ with reference to relevant case law:²

'The general rule is that, where a party is responsible for a case not being proceeded with on the day set down for hearing, such party must pay the costs that are wasted. It is not correct to state as a general rule that wasted costs are to be paid by the party who

¹ The Law of South Africa, Vol. 10 3rd ed. "Costs" para 314.

² Including *Burger v Kotze and Another* 1970 (4) SA 302 (W) at 304E-H; *Sublime Technologies (Pty) Ltd v Jonker and Another* 2010 (2) SA 522 (SCA) para [3].

*seeks a postponement. That may be the normal order if no-one is to blame for the fact that the trial has to be postponed, but if a postponement has become necessary in consequence of the fault or default of one of the parties or his or her representative, the normal rule is that the wasted costs are awarded against the party who was at fault or in default.'*³

[29] This approach was exemplified in the judgment of the matter of *Sanvido*,⁴ where, the Court (*per* Berman AJ, as he then was) ordered the defendant to pay the costs occasioned by, and attributable to, the notices of intention to amend; the costs of the plaintiff's application for a **postponement and for payment of wasted costs**; and the costs wasted as a result of the **postponement of the trial**. Berman AJ also *inter alia* stated the following in support of those orders:⁵

'Here was a case where significant amendments were moved at a very late stage and - as I made clear in Manus v Nelson (supra)⁶ - where a party is in no position to resist an application for a postponement of a trial, brought as a result of its having made late discovery (as in Manus' case) or as a result of substantial

³ See, too, the comments in the same paragraph of the LAWSA "Costs" section under the heading "Costs of the day", where it is stated that a litigant who forces another party to apply for a postponement must, in the normal course, pay the costs of the (wasted) day or other wasted costs.

⁴ *Sanvido & Sons (Civil Engineering) (Pty) Ltd v Aglime (Pty) Ltd* 1984 (4) SA 339 (C).

⁵ *Sanvido supra* fn.4 at 343F-G.

⁶ 1982 (2) PH F62 (C).

amendments made at a very late stage (as here), it would have to show very strong grounds for depriving the other party of its costs or for delaying argument as to liability therefor.'

[30] In the circumstances, I order that the Applicants are to pay the wasted costs of the 1st to 3rd Respondents, 6th Respondent, 7th Respondent, 11th Respondent, 14th Respondent, 16-19th Respondent. Such costs to include costs of 1 day preparation and 1 day for court appearance on 25 September 2025. Such costs to be taxed at Scale B.

ORDER

[31] In the circumstances I make the following order:

1. The Applicants are to pay the costs of the 1st to 3rd Respondents, 6th Respondent, 7th Respondent, 11th Respondent, 14th Respondent, 16-19th Respondent. Such costs to include costs of 1 day preparation and court appearance on 25 September 2025.
2. Such costs to be party and party costs to be taxed at scale B.



M.H.M. MASILO

ACTING JUDGE OF THE HIGH COURT

LIMPOPO DIVISION

APPEARANCES:

FOR APPLICANT : ADV Mathibedi SC

Instructed by : State Attorneys

FOR 1st – 3rd RESPONDENT : Adv K.Mokwena
Adv C Marais 7th Respondent
Adv P Thobejane 9th Respondent
Adv Kgafane 11th Respondent
Adv Baloyi 14th + 17th Respondent
Adv A.T Thobejane 6th Respondent