

**IN THE LABOUR COURT OF SOUTH AFRICA
HELD IN BRAAMFONTEIN**

CASE NO. : J640/00

In the matter between :

SURYIA KUMAR PARMANAND APPLICANT

And

THE UNIVERSITY OF VENDA RESPONDENT

EX TEMPORE JUDGMENT

MAYA J. :

[1] This is an opposed application for a postponement. The respondent seeks a postponement of the proceedings which were set down for hearing on trial today. The basis of the application is mainly that the respondent has not been able to prepare properly for the trial because the documentation the applicant intends to rely on in the trial proceedings (“the bundle”) was delivered out of time.

[2] It is common cause that –

- a) the parties agreed at a pre-trial conference that the applicant would deliver the bundle not later than three weeks before the date of trial;
- b) in a letter dated 21 June 2004 the applicant’s attorneys undertook to deliver the bundle shortly, by registered mail, and requested their counterparts to timeously acknowledge receipt thereof;
- c) on 24 June 2004 the applicant’s attorneys sent their counterparts a facsimile message, apparently a covering minute accompanying the bundle, asking to be notified within 7 days of receipt thereof if there was any objection to the content of the bundle;
- d) the respondent’s attorneys did not receive the bundle by the expected date; as the trial date drew closer, during the court recess, they made various enquiries in an attempt to obtain it; it

was established only on 26 July 2004 when the respondent's attorneys retrieved the bundle from the post office, upon obtaining the relevant tracing details from the applicant's attorneys, that the latter had sent it to a wrong address.

[3] It was argued on the applicant's behalf that his attorneys' letter of 24 June 2004 made it clear to their counterparts that the bundle was ready and had been sent to them as agreed and that when they did not receive it within the expected time, at the expiry of the 3 week period before trial, they should have made enquiries to locate it. It was argued further that the error made by the applicant's attorneys in sending the bundle to a wrong address was an innocent one and was not a deliberate tactic to delay the matter or hamper the respondent's defence.

[4] I am not persuaded that these submission assist the applicant. Clearly, the obligation was on him to ensure that the bundle was served on the respondent. The respondent was certainly under no legal obligation to follow up on his failure to carry out his undertaking. In any event, as pointed out above, the respondent's attorneys did make extensive enquiries at some stage.

[5] I raised issue with the applicant's counsel about his instructing attorneys' failure to timeously notify the respondent's legal representatives of their intention to seek a postponement. His response, which I find convincing in the circumstances, was that the need for the postponement became apparent only during preparation which continued until this past week-end.

[6] On a consideration of all the relevant factors I am satisfied that the respondent has met the criteria for the grant of a postponement which are set out, for example, in the case of **Myburgh Transport v Botha 1991(3) SA 310 (NmSC)**. In view of the fact that the delay, which has resulted in the need for a postponement, has been occasioned solely by the negligence of the applicant's attorneys, it seems only fair in the circumstances that he should bear the costs.

[7] In the result the following order is made :

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- a) The application for a postponement is granted.
- b) The matter is postponed for hearing on 1-5 November 2004.
- c) The applicant is ordered to pay the costs.

ACTING JUDGE OF THE LABOUR COURT

For the Applicant : Mr Olivier (instr. by A.C.Osman Att.)

For the Respondent : Mr Skosana (instr. by Ramagaga Att.)

Heard and delivered on 2 August 2004