



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

**Case No. EL 312/2020
NOT REPORTABLE**

In the matter between:

B[...] B[...] OBO A[...]

Plaintiff

and

**MEMBER OF THE EXECUTIVE
COUNCIL FOR HEALTH, EASTERN CAPE**

Defendant

***EX TEMPORE JUDGMENT IN RESPECT OF
APPLICATION BY DEFENDANT FOR
A POSTPONEMENT OF TRIAL***

HARTLE J

[1] When I weigh up all the reasons for and against the present application, I cannot (in favour of granting the postponement presently sought) ignore the fact that the defendant wishes to pursue the public healthcare defence even if it has floundered on two bases, one in formally getting along with its proposed professional assessments of the child; and, two, in fluffing the delivery of its perfected amendment.

[2] There also exists in the background the very real prospect, as Mr. Van Der Walt fairly conceded, that the Constitutional Court is likely to allow the defendant to argue an appeal before it against the *T N obo B N v Member of the Executive Council for Health of the Eastern Cape Government and Others* (“TN”)¹ decision because it raises a constitutional issue that the Department has diligently put its weight behind since the *Member of the Executive Council for Health and Social Development, Gauteng v DZ obo WZ* (“DZ”)² proceedings in which it joined itself as an *amicus*.

[3] But the Department’s dilatoriness will come at a cost and I am inclined to order it to pay punitive costs based on its obvious state of unpreparedness for the trial this week, due to its own mistakes, which cannot be laid at the door of the plaintiff.

¹ (383/23) [2026] ZASCA 14 (11 February 2026).

² (CCT20/17) [2017] ZACC 37; 2017 (12) BCLR 1528 (CC); 2018 (1) SA 335 (CC) (31 October 2017).

[4] As the child best interests go, I am concerned by the backlog of these cases that will (by the present postponement) push it out to a trial in 2027.

[4] But if I accept the Department's *bona fides* that it is really due diligence that it is after, and a conservative approach in assessing the plaintiff's future medical expenses, then I am inclined to put it to terms to take certain measures in the interim to ameliorate the hardship to the child by the effect of the postponement which I feel obliged to grant today.

[5] In this regard I propose that the parties hold their own pre-trial conference within a period of two calendar months from today. Without being prescriptive, at such a meeting the parties are to iron out the difficulties between them regarding the estimated future costs and identify which of these costs can be agreed upon without the need to lead evidence, even if only on a conditional basis pending the outcome of the (anticipated) *TN*³ appeal to the Constitutional Court.

[6] They should also talk through what remains, including the possibility of an interim payment, and what formal in-hospital assessment will still be necessary.

[7] These aspects are to be reported in an updated minute to be presented in a case management conference before a judge.

[9] I grant the following order:

1. The matter is postponed to 6 September 2027 for trial in respect of the remaining aspect of past and future medical expenses.

³ *Supra*.

2. The Defendant is ordered to pay for the wasted cost of this week's enrolment of 5 days on the scale as between attorney and own client, such costs to include the cost of 2 (two) counsel.
3. The defendant is ordered to pay the travel and accommodation costs of the witness, Mr. Kroon, as well as his preparation and reservation fees.
4. The matter is to be placed on the case management roll for case management on 15 May 2026.
5. In anticipation of that conference the parties are to file an updated minute of the outcome of their discussions pertaining to settlement and/or the continuation of the trial.

B HARTLE
JUDGE OF THE HIGH COURT

DATE OF APPLICATION: 2 March 2026

DATE OF JUDGMENT: 2 March 2026

APPEARANCES:

For the plaintiff : Mr. N Van Der Walt and Ms. S Mashiya instructed by S Booie & Sons, East London (ref. Mr Booie).

For the defendant : Mr. S Maliwa instructed by The State Attorney, East London (ref. Mr. Mgijulwa).