



**IN THE HIGH COURT OF SOUTH AFRICA
NORTH WEST DIVISION, MAHIKENG**

Case no: 615/20

Not reportable

In the matter between:

GODISOANE GOODBOY SERIMA

PLAINTIFF

and

THE MINISTER OF POLICE

DEFENDANT

Coram: Wessels AJ

Reserved: 5 May 2026

Delivered: This judgment was handed down electronically, circulated to the parties' representatives via email, uploaded to CaseLines and release to SAFLII. The date and time for the handing down of the judgment are deemed to be 10h00 on 5 August 2026.

Summary: Costs of postponement – defendant's counsel unavailable on allocated trial date – State Attorney failed to communicate unavailability to plaintiff for over five weeks – whether

postponement costs should be on attorney-and-client scale or party-and-party scale – attorney-and-client costs refused – party-and-party costs awarded.

JUDGMENT

Wessels AJ

Introduction

[1] This matter was set down for trial on quantum on 5 May 2026, following the separation of merits and quantum ordered by Djaje DJP on 25 August 2022, on which date the defendant was held liable for 100 per cent of the plaintiff's agreed or proven damages arising from an unlawful assault, arrest and detention. When the matter was called on 5 May 2026, counsel for both parties appeared. It was apparent that the trial could not proceed and the parties agreed on a postponement. The only dispute was the costs of that postponement. I granted the postponement by agreement and reserved my judgment on costs.

Background

[2] The following chronology emerges from counsel's address and related correspondence between the legal representatives of the parties, which was placed before this Court. On 27 November 2025 the Registrar allocated 5 May 2026 as the trial date. The plaintiff served and filed a notice of set down for trial on 7 January 2026. On 13 March 2026, Mrs Williams, counsel for the defendant, emailed the State Attorney to advise that she was unavailable on 5 May 2026 and

requested that the matter be removed from the roll. Two reminder emails by Mrs Williams to the State Attorney followed on 16 March and 15 April 2026. The State Attorney took no steps in response to any of the three emails.

[3] Five weeks after Mrs Williams' first email, on 23 April 2026, the State Attorney wrote to the plaintiff's attorneys for the first time, attaching an email described as being from 'our client' and 'self-explanatory'. This email was in fact the email from Mrs Williams to the State Attorney. The plaintiff's attorneys, on 28 April 2026, indicated in writing that they were ready to proceed. On 30 April 2026, the State Attorney replied and advised that Mrs Williams was not available and asked for a postponement, with costs to be reserved. The plaintiff's attorneys responded the same day, proposing to agree to a postponement on condition that the defendant pay the wasted costs on the party-and-party scale.

[4] At the hearing on 5 May 2026, Mrs Williams had become available again shortly before the trial date but seemingly only for the purposes of appearing in the application for postponement. The plaintiff's Rule 38(2) application had been filed on 23 April 2026, 5 (five) days before the hearing. The defendant filed no opposing papers to that application.

Counsel's submissions

[5] Mr Maree, for the plaintiff, submitted that the postponement was caused solely by the defendant's failure to ensure counsel's availability and by the State Attorney's unexplained delay in communicating it. The plaintiff had been ready to proceed, having filed the notice of set down, prepared the trial bundle, filed expert notices and brought the Rule 38(2) application. The plaintiff sought an order that the defendant pay the wasted costs on the attorney-and-client scale, including the bundle and preparation costs and counsel's Scale B fees.

[6] The defendant, for the first time at the hearing, offered party-and-party costs. Mrs Williams, for the defendant, submitted that the plaintiff also bore some responsibility, on the following grounds: Firstly, the Rule 38(2) application was filed five court days before the hearing. However, the defendant filed no opposing papers and did not seek a postponement on that ground, its actual ground being the unavailability of counsel. Secondly, Uniform Rule 37(8) leaves the pre-trial conference to be initiated by either party or directed by the court, and that duty did not rest exclusively on the plaintiff. Although written pre-trial questions and answers were exchanged between the parties, the defendant did not request a pre-trial conference. In any event, a pre-trial conference would not have resolved counsel's unavailability.

Application to the facts

[7] The position is that costs ordinarily follow the result. The party who causes a postponement is generally liable for the wasted costs of the other party. A postponement by agreement does not, automatically, deprive the innocent party of its costs. These are trite principles that do not demand in-depth analysis in light of the facts before this Court. The postponement was necessary because the defendant's counsel would not be available on the allocated trial date. Having considered the facts, I find that the plaintiff did not contribute materially to the postponement. The defendant bears sole responsibility.

[8] The State Attorney's conduct gives cause for concern. It took five weeks to inform the plaintiff of counsel's unavailability, and did so only by forwarding an internal communication with counsel that was inaccurately described as coming from 'our client'. Whether that was done by accident or design is not a matter I need to decide. The State Attorney then made no offer of costs and did not respond to the plaintiff's further letters regarding the postponement.

[9] An attorney-and-client costs order is a punitive measure reserved for conduct that is vexatious or otherwise reprehensible which principle was stated in *ABSA Bank Ltd (Volkskas Bank Division) v S J du Toit & Sons Earthmovers (Pty) Ltd*¹ as follows:

‘As stated above, I am of the view that there were no such grounds in the instant matter. In *In re Alluvial Creek Ltd* 1929 CPD 532 Gardiner AJ expressed himself as follows, at 535:

‘An order is asked for that he pay the costs between attorney and client. Now sometimes such an order is given because of something in the conduct of a party which the Court considers should be punished, malice, misleading the Court and things like that, but I think the order may also be granted without any reflection upon the party where the proceedings are vexatious, and by vexatious I mean where they have the effect of being vexatious, although the intent may not have been that they should be vexatious. There are people who enter into litigation with the most upright purpose and a most firm belief in the justice of their cause, and yet whose proceedings may be regarded as vexatious when they put the other side to unnecessary trouble and expense which the other side ought not to bear.’

[10] The conduct of the State Attorney was dilatory and unreasonable, but it did not involve dishonesty, malice or a deliberate attempt to prejudice the plaintiff. It was passive and poorly communicated rather than improper. On this analysis, it does not meet the threshold for a punitive order. Party-and-party costs are the appropriate order, including preparation costs and counsel’s Scale B fees.

Order

[11] In the result, the following order is made:

- 1 The trial scheduled for 5 May 2026 is postponed to a date to be allocated.

¹ *ABSA Bank Ltd (Volkskas Bank Division) v S J du Toit & Sons Earthmovers (Pty) Ltd* 1995 (3) SA 265 (C) at 268 A-C.

- 2 The defendant shall pay the plaintiff's wasted costs occasioned by the postponement on the party-and-party scale and the costs of counsel for the plaintiff on Scale B for attending court on 5 May 2026 and for all reasonable preparation related to that date.
- 3 The Rule 38(2) application stands over for determination on the new trial date




M WESSELS
ACTING JUDGE OF THE HIGH COURT
NORTH WEST DIVISION, MAHIKENG

Appearances

For the plaintiff: Adv Maree

Instructed by: Nienaber Wissing Attorneys
Mahikeng

For the defendant: Adv Williams

Instructed by: The State Attorney
Mmabatho