IN THE HIGH COURT OF SOUTH AFRICA
{EASTERN CAPE DIVISION, GRAHAMSTOWN}

Case no. 3014/2016

In the matter between:

ROLAND ATHOL PRICE TROLLIP Plaintiff

And

SIYABULELA KNIGHT-NTABENI MALI Defendant

JUDGMENT

TONI AJ

Introduction

[1] This matter was set down for trial on 15 October 2018. Defendant appeared in person, alleging that he terminated the mandate of his previous legal representative on 2 October 2018. Before trial proceeded, the defendant sought postponement of the matter on the grounds that: (a) he was ill and (b) required legal representation. After hearing submission from both parties, I granted an order in the following terms:

(a) That the application for postponement is dismissed and the defendant shall pay today's costs of trial.

(b) That the matter is rolled over to 16 October 2018 for trial and the parties are directed to prepare themselves accordingly.

(c) That members of the media present in court are directed not to publish and disclose details of the defendant's medical history, condition, diagnosis and
ailments in the course of their publication.

[2] The matter was previously before Court for trial on 11 October 2017 and was postponed *sine die* by agreement. Defendant was ordered to amend his pleadings within ten (10) days from the date of the said order. Plaintiff was similarly ordered to amend his pleadings ten (10) court days thereafter. Defendant was ordered to pay the wasted costs occasioned by the postponement.

Submissions

[3] In his submission Defendant stated that he has been chronically ill for the past four to five months and has been in and out of hospitals. He also consulted with Doctors, Fredericks and Mxenge, on 5 and 11 October 2018, respectively, and was diagnosed of Irritable Bowel Syndrome. In pursuit of his application for a postponement, Defendant presented a plethora of documents which were marked "Exhibit C1 to C18".

[4] According to the defendant all these documents prove that he has been ill for some time and has not been able to earn income because of his deteriorating health condition. In the past three to five months, he had to undergo at least three procedures and only received a 'definitive diagnosis during the last procedure'. His illness did not only affect his income earning potential but has also impacted negatively on his stress levels. It has also impacted negatively on his ability to support his four children and also has a negative bearing on his family.

[5] On 4 October 2018 he had to go and prepare for a colonoscopy procedure meant to be conducted on 5 October 2018. This is more apparent from "Exhibit C9". On 5 October 2018 he was consulted by Dr Fredericks who diagnosed him of Irritable

Bowel Syndrome and booked him off sick from 5 October 2018 to 12 October 2018. This is more apparent from "Exhibit C1". He further submitted that "Exhibits C1 to C3" and "C8" are material for his condition and the Court can rely on these for its determination. All the other exhibits have been presented to enable the Court to understand that he was not lying about his health condition, he stated.

[6] On 11 October 2018 he was consulted by Dr Mxenge, a well-known medical practitioner who is treating patients from far and wide up to Cape Town. Dr Mxenge also put him on sick leave from 11 October 2018 to 11 November 2018. This is more apparent from "Exhibit C3" and "C2" Defendant concluded his submissions on his medical condition by saying that for the above medical reasons he cannot stand trial and properly defend himself.

[7] Defendant submitted further that his loss of income due to his medical condition also hampered his ability to solicit the services of a legal representative. He was previously represented by an Attorney, the mandate of whom he terminated on 2 October 2018. The reason for terminating the mandate is that he disagreed with his Attorney on fundamental issues. One of those issues is the refusal by his erstwhile Attorney to carry out his instructions and apply for postponement of this matter.

[8] Consequent to financial constraints he went to seek assistance from the Legal Aid Board and was informed that they have to conduct the means test which normally takes up to three weeks to be verified. At present he cannot afford the services of a private attorney, so he continued. He approached an Attorney who he requested to approach Plaintiff's legal representatives and advise them of his situation, including that he would be seeking a postponement but their response was that they will go ahead with the case and will resist any application for a postponement. Even in Court he attempted to speak to Plaintiff's Counsel relative to his quest for a postponement but the response was negative, so he continued.

[9] In his submission on behalf of Plaintiff, Mr Cole averred that on 11 October 2017 the matter was postponed precisely for the same reason as in the present case. Defendant also sought to amend his plea but having been ordered to do so by the Court, he failed to amend his pleadings. Mr Cole went on to read into the record a letter written by Defendant's previous attorneys of record which was received by his instructing attorneys, Zolile Ngqeza Attorneys, on 27 September 2017 at 13:51. Of particular significance in the said letter is paragraph 1 which reads as follows:

> "Our client fell ill, had to undergo an operation and was hospitalised for an extended period, which made it difficult to hold consultations and obtain instructions."

[10] Apart from the above and the defendant's desire to amend his plea, as alluded to above, Defendant said that he also wanted to travel to consult with his indigent witnesses who reside in 'far flung' rural areas and his efforts were inhibited by his illness and logistical constraints. During his submissions earlier the defendant intimated that such consultations had since been held.

[11] Despite the fact that the defendant himself terminated his attorneys mandate on 2 October 2018, his former attorneys waited until the last minute to withdraw and only conveniently advised the plaintiff's attorneys of their withdrawal *vide* an email sent at 16:10 on 12 October 2018 that was received by the plaintiff's attorneys at 16:30. A letter attached to this email confirms that the defendant terminated his mandate on 2 October 2018. It further states that the defendant advised his former attorneys that 'he has identified a new attorney who will take over the matter. Defendant also sought refund to enable him to pay his new attorney. Attached to this letter is a notice of withdrawal by Defendant's former attorneys. This email together with its attachments was admitted as "Exhibit B".

[12] Mr Cole further submitted that he told the defendant earlier on that his instructions are to object to the medical certificates submitted in support of his application for a postponement. According to Mr Cole, the defendant attended at

Greenacres hospital on 5 October 2018 and was given a sick leave by Dr Fredericks from 5 October 2018 to 12 October 2018. On 11 October 2018, he opportunistically consulted with Dr Mxenge, who never examined him but relied on the diagnosis made by Dr Fredericks, as it is more apparent from "Exhibit C2", to book him off sick.

[13] Mr Cole further submitted that any postponement of the matter would severely prejudice the plaintiff who has been portrayed throughout as domineering racist and abusive character. Plaintiff urgently need to clear his name and cleanse his tarnished reputation which is the only important but intangible asset that will be interred with his bones when he dies. The postponement sought will only serve to further harm the plaintiff who really want to have his day in court and clear his name. Plaintiff is a passionate politician and the matter is of public importance and needs to be finalised, so continued Mr Cole's submission.

[14] In relation to Defendant's application for legal representation by the Legal Aid Board, Mr Cole contended that the defendant was previously represented by the Legal Aid attorney as far back as 2006 but it withdrew as it is more apparent from "Exhibit D1 to D6".

[15] Mr Cole further referred the court to page 136 of the paginated papers which serve to cast negative aspersions against the plaintiff and refer to him as a cruel and abusive racists who is bent on exploiting the poor farmworkers. The sixth paragraph of the said document refers to the claims of racism, human rights abuses and atrocities that 'were all based on evidence and statements that were signed by those farmworkers'. Mr Cole referred the court further to "Annexure POC2" at page 98 of the paginated papers which refer to Plaintiff as 'the fugitive who is running away from his farm workers that accuse him of human rights abuses, among other things.'

[16] In summation, Mr Cole contended that in his own version the defendant does not have funds to employ legal representatives which means that even if the application

could be granted the plaintiff cannot be compensated by an appropriate costs order as the defendant will be unable to pay those costs.

[17] In reply the defendant denied that Mr Cole's submissions were true and submitted that they were meant to conflate issues, cast aspersions on his character, portray him as a liar and dishonest person and belittle and undermine his medical condition. Defendant further submitted in reply that the reasons for postponement on 11 October 2017 were largely because witnesses were not ready and also because of his ill health. Defendant further read and put in perspective certain paragraphs of the document referred to in page 136 of the record.

The legal framework

[18] A postponement is an indulgence[1] sought by one party to a suit and it must be made timeously, that is, as soon as the circumstances which give rise to the application are known to the party seeking it. It has been held that postponement is not merely for the taking[2].

[19] Factors that need to be taken into account in an application for a postponement are set out by the Constitutional Court in *National Police Service Union and Others v Minister of Safety and Security and Others*[3] where Makgoro J said:

> "The postponement of a matter set down for hearing on a particular date cannot be claimed as of right. An applicant for a postponement seeks an indulgence from the Court. Such postponement will not be granted unless this Court is satisfied that it is in the interests of justice to do so. In this respect the applicant must show that there is good cause for the postponement. In order to satisfy the Court that good cause does exist, it will be necessary to furnish a full and satisfactory explanation of the circumstances that give rise to the application. Whether a postponement will be granted is therefore in the discretion of the Court and cannot be secured by mere agreement between the parties. In exercising that discretion, this Court will take into

[1] See Isaacs and Others v University of the Western Cape 1974 (2) SA 409 (C) at 411 H; Also Grootboom v National Prosecuting Authority 2014 (2) SA 68 (CC) at 76 C-D;
[2] See National Police Service Union and Others v Minister of Safety and Security and Others 2000 (4) SA 1110 (CC)
[3] Ibid at para 4

> account a number of factors, including (but not limited to): whether the application has been timeously made, whether the explanation given by the applicant for postponement is full and satisfactory, whether there is prejudice to any of the parties and whether the application is opposed."[4]

[20] Postponements in the High Court are regulated by Rule 41 of the Rules of Superior Courts Practice (the Rules) and any postponement is always at the discretion of the Court. The Court has a discretion to grant or refuse a postponement. The guiding principle is only that in granting or refusing a postponement the court should exercise its discretion judicially and after considering what is fair and just to both parties and balancing the interest of justice[5]. The discretion must not be exercised capriciously or upon any wrong principle but for substantial reasons[6]. In *Psychological Society of South Africa v Qwelane and others*[7] the Constitutional Court held:

> "In exercising its discretion, a court will consider whether the application has been timeously made, whether the explanation for the postponement is full and satisfactory, whether there is prejudice to any of the parties and whether the application is opposed. All these factors will be weighed to determine whether it is in the interests of justice to grant the postponement. And, importantly, this Court has added to the mix. It has said that what is in the interests of justice is determined not only by what is in the interests of the immediate parties, but also by what is in the broader public interest."

[21] It is trite that the party seeking postponement must proffer good and strong reasons therefor and that the applicant must give full and satisfactory explanation of the circumstances that give rise to the application[8]. The application itself must be

[4] The above principles were restated by the Court in Lekolwane and Another v Minister of Justice and Constitutional Development 2007 (3) BCLR 280 (CC) at para. 17
[5] See cases cited in foot note 1, above, also Ketwa v Agricultural Bank of Transkei [2006] 4 All SA 262 Tk at 271f
[6] See National Coalition for Gay and Lesbian Equality and others v Minister of Home Affairs and others 2000 (2) SA 1 (CC) at 14A-C; Myburgh Transport v Botha t/a SA Truck Bodies 1991 (3) SA 310 (Nms)
[7] 2017 (8) BCLR 1039 (CC) in para 31
[8] See National Police Service Union (note 2 above) at 1112 C-F; Shilubana and Others v Nwamitwa (National Movement of Rural Women and Commission for Gender Equality as Amicus Curiae) 2007 (5) SA 620 (CC) at 624B-C;

bona fide and must not be used as a tactical endeavour to obtain an advantage to which the applicant is not entitled.

[22] In the present case the defendant made the application for postponement orally and not in a substantive form. Despite the fact that the defendant had known since 2 October 2018 upon terminating his attorney's mandate that he was without legal representation, he failed to secure the services of an attorney and this cannot be blamed on the plaintiff. The matter was properly set down for trial and was certified trial ready during the roll call on 24 September 2018. It is common cause that the Defendant or his attorney did not attend the roll call. Defendant knew that this matter was set down for trial but made no effort to bring a substantive application for a postponement on time.

[23] Defendant has advanced two reasons for seeking postponement, namely; his chronic medical condition as well as lack of legal representation. According to him the second reason is linked to the first in that it is his medical condition that has resulted in his lack of income to afford the services of an attorney. In pursuit of the former, he produced two medical certificates from two different Doctors which, according to him, suggest that he is unfit for work.

[24] The first medical certificate (Exhibit C1) was issued by Dr Frederick after he diagnosed the defendant of Irritable Bowel Syndrome. The Doctor recommended a sick leave from 5 October 2018 to 12 October 2018. The second medical certificate issued by Dr Mxenge booked the defendant off sick from 11 October 2018 to 11 November 2018.

[25] It does not appear from her medical certificate that Dr Mxenge examined the defendant. All that Dr Mxenge says in Exhibit C1 is that "*the patient, Sibulele Mali attended here on … , states that he was unwell from … and will be fit for work from /on 11/11/18*[9]. Furthermore in Exhibit C2 Dr Mxenge states that:

[9] My underlining

> "the above named suffers from Irritable Bowel Syndrome. This diagnosis was made by Dr Fredericks a specialist based at Greenacres hospital. As a result of this condition he also suffers from depression."

[26] Discernible from the above is that Dr Mxenge relied on the diagnosis made by Dr Fredericks without satisfying herself as to the condition of the defendant and properly examining him. It is not known on what basis the learned Doctor gave the defendant a month to recover and why it would take the defendant more time to be unwell than that given by the Doctor who examined him. No treatment was specified by Dr Mxenge in her medical certificate.

[27] Mr Cole submitted that for this reason they do not accept Dr Mxenge's medical certificate and contended that the defendant would have called Dr Mxenge to testify and explain in Court on what basis does she state that the defendant would be unfit for work for such a long period if she did not examine him. Doctor Mxenge was not called to testify and clarify her assumption. I agree with Mr Cole in this regard.

[28] The medical certificate does not state that Dr Mxenge had personally examined the defendant, whereupon she diagnosed him of his alleged illness, the treatment therefor and the prognosis in respect thereof. Furthermore Dr Mxenge's medical certificate is not verified and authenticated. In her certificate Dr Mxenge does not say that the defendant was unfit to testify but merely said that 'the patient said he was unwell'.

[29] The difficulty of accepting Dr Mxenge's medical evidence as it stands is that it would constitute an inadmissible hearsay. A medical certificate is not accepted upon its mere production. It still has to be verified, authenticated and attested to by the person whose evidence it purports to be. In view of the above immense shortcomings with Dr Mxenge's medical certificate, this Court cannot accept that evidence without attestation. In dismissing an appeal against the decision of a magistrate who dismissed an application for postponement on medical grounds, Pickering J (with

Plasket J concurring) in *Baron Camilo Agasim-Pereira of Fulwood v Wertheim Becker Incorporated*[10] said:

> "In the present matter appellant has, in my view, failed abysmally to explain to the Court the true nature of his alleged illness; the treatment therefor; the prognosis in respect thereof; and the time by which he expects to be in a condition such as to enable him to travel to South Africa."

[30] The learned Judge went further to say in his judgment:

> "I will deal firstly with the issue of the admissibility of the medical certificates. In this regard it would appear that the magistrate misconstrued the basis of respondent's objection to their admissibility and was under the impression that the objection thereto was to the production of faxed copies as opposed to the original certificates. It appears, however, from what I have set out above that respondent's objection related firstly to the fact that no formal application for a postponement had been brought by appellant and secondly to the production of unattested medical certificates, certain of which amounted to hearsay evidence."[11]

[31] In this case defendant had known about his medical condition since 2 October 2018 when he terminated the mandate of his attorney that he would seek an application for postponement. When his former attorney refused to carry out his mandate and apply for a postponement, defendant viewed him as incompetent and terminated his mandate. The attorney accordingly withdrew which is the reason why the defendant is unrepresented in these proceedings. No formal application for postponement had been brought before Court when the defendant had an ample opportunity to do so and have the medical certificates authenticated and attested to. He elected not to do so.

[32] In the above case the learned Judge referred to the case of *Joshua v Joshua 1961 (1) SA 455 (GWLD),* where the defendant applied for a postponement of a

[10] 2006 (4) All SA 43E at 54
[11] Ibid 48-9

trial on the ground of his ill-health. The application was opposed by the plaintiff who pointed out that no formal notice of motion of the application for a postponement had been given and that no costs had been tendered. Defendant's Counsel then asked for leave to hand in a doctor's certificate from the Bar "without any proof or identification", relying in this regard on *Hanson, Tomkin and Finkelstein v D.B.N. Investments (Pty) Ltd 1951 (3) SA 769 (N)*. It appeared that the defendant's attorneys had been aware for a week prior to the application for the postponement being made of the defendant's alleged ill-health. In refusing the postponement De Vos Hugo J, in *Joshua v Joshua* supra, remarked as follows at 457 A-C:

> "The determination of an application for a postponement is a matter which is in the discretion of the Court but the discretion should be judicially exercised. Plaintiff got to know of the intention to apply for a postponement on the 13th of November and found it possible to come prepared to Court to oppose the application. I can see no reason why the defendant could not have given proper notice of her intended application and produced evidence in the proper manner to support the application. In the exceptional circumstances which existed in ***Hanson, Tomkin and Finkelstein's*** case, supra, I can agree that a doctor's certificate can be handed in from the Bar but where there is time enough to prove such a certificate in the correct manner it should be done and the certificate cannot be accepted from the Bar. The result is, therefore, that there is no proper proof of ill-health to justify a postponement."

[33] In the case of *Hanson, Tomkin and Finkelstein* the defendant only became aware on a Friday preceding the trial the following Tuesday of the ill-health of its principal witness. An affidavit by a medical practitioner was tendered in support of an application for a postponement. Plaintiff objected to the affidavit being put in, contending that a formal application on notice should have been made for a postponement or that the medical practitioner should have been called to testify. Caney AJ stated in this regard that "generally an application for a postponement should be made in proper form in accordance with the Rules governing the making

of applications" but that the circumstances were such that a postponement should be granted. This case is distinguishable from the present case.

[34] A medical certificate should not, in my view, be accepted as evidence of illness of a party relying on it for a postponement upon its mere production. It remains hearsay and it is incumbent on the applicant to lay a proper basis for its acceptance and ensure that it is authenticated and attested to by the medical practitioner whose evidence it is. To do otherwise would be to interfere with the discretion of the Court, reduce its role to that of a rubber stamp and open floodgates for endless postponements. Its acceptance upon its mere production would more often than not lead to wanton abuse of process and would grind the administration of justice to a halt.

[35] The principles of the case at hand are, in my view, analogous with the principles enunciated in *Joshua v Joshua* supra. The medical certificate of Dr Mxenge is fraught with material deficiencies which cannot be cured by defendant's submissions from the bar. This takes us to defendant's second reason for seeking postponement which I propose to deal with hereunder.

[36] Before dealing with the question of the defendant's legal representation it is apposite to refer to the words the of Harms JA in *Take and Save Trading CC & others v Standard Bank of SA Ltd*[12] which are resonating. He said:

> "A supine approach towards litigation by judicial officers is not justifiable either in terms of the fair trial requirement or in the context of resources. One of the oldest tricks in the book is the practice of some legal practitioners, whenever the shoe pinches, to withdraw from the case (and more often than not to reappear at a later stage), or of clients to terminate the mandate (more often than not at the suggestion of the practitioner), to force the court to grant a postponement because the party is then unrepresented. Judicial officers have a duty to the court system, their colleagues, the public and the parties to ensure

[12] 2004 (4) SA 1 (SCA)

> that this abuse is curbed by, in suitable cases, refusing a postponement. Mere withdrawal by a practitioner or the mere termination of a mandate does not, contrary to popular belief, entitle a party to a postponement as of right."[13]

[37] In considering the issue of the defendant's legal representation it is important, for the purpose of determining whether or not the defendant was the architect of his ill fate, to reflect back to the sequence of events that unfolded since the last postponement of the matter on 11 October 2017. Shortly before 11 October 2017 Defendant's legal representatives wrote a letter to Plaintiff's attorneys advising them that Defendant is ill and requesting that the matter be postponed. A year later the same reason is advanced by the defendant to seek further postponement of the matter. Defendant also sought to amend his plea, locate and consult with his witnesses who are from 'the far flung' rural outskirts of the Eastern Cape. The matter was indeed adjourned *sine die* with an appropriate order for the costs to afford Defendant time to recover and consult with his witnesses.

[38] Defendant had known since early last year (from his own submission) that he was sick and four to five months ago his situation exacerbated and also he was in and out of hospitals. Shortly before he was required to prepare for a colonoscopy procedure, Defendant consults with his attorney on 2 October 2018 and instructs his attorney to seek further postponement of the mater on the ground that he was ill. This is the same stratagem that his attorney employed to seek postponement of the matter a year ago and when his attorney refused to carry out his instruction a misunderstanding ensues between the two. On the same date Defendant terminates the mandate due to 'his attorney's incompetence', among which in his own saying, is his attorney's failure to comply with his instruction to seek a postponement.

[39] Despite having known that his mandate has been terminated on 2 October 2018, his attorney withholds the information about the termination of his mandate

[13] Ibid at para 3

and does not immediately advise plaintiff's attorneys until 16:10 on Friday, 12 October 2018 when he emails the notice of withdrawal which was received by the plaintiff's attorneys only at 16:30 on the even date.

[40] Two days after terminating his attorney's mandate, the defendant, in his submission in court, was told to prepare for a procedure on 4 October 2018 and on 5 October 2018 was attended by Dr Fredericks at Greenacres hospital. Dr Fredericks diagnoses him of Irritable Bowel Syndrome and books him off sick with effect from 5 October 2018 to 12 October 2018. The date of the 12th October 2018 is the date on which the defendant's former attorneys emailed their notice of withdrawal.

[41] A day before his sick leave expired, Defendant visits Dr Mxenge and on the strength of Dr Fredericks diagnosis Dr Mxenge books him off-sick without examining him. This is a day before the sick leave authorised by Dr Fredericks expired.

[42] On 15 October 2015 Defendant appears in Court in person and seeks postponement on medical grounds, the same reason he advanced to secure a postponement a year ago. It transpired during argument that the defendant had not amended his plea as directed by the Court on 11 October 2017 and his witnesses were not before Court. In his submission, the Defendant cited financial constraints to transport his witnesses from 'the far flung' areas of the Eastern Cape. The defendant was not ready to proceed with the trial despite having been given an indulgence a year ago to prepare himself.

[43] Also discernible from the above is that the Defendant had known since at least 2 October 2018 that he would apply for a postponement but failed to make a formal application for a postponement and to ensure that the medical evidence relative to his indisposition is properly brought before court with proper

authentication and attestation by the Doctor. In any event I have already found that Defendant's medical certificate is a farce and cannot be admissible.

[44] The facts of this case are distinguishable and remarkably different from a situation where a person falls sick a day or two before his or her trial and is unable to either procure alternative legal representation or ensure that his medical certificate is properly presented before Court. He had an ample opportunity to do so.

[45] Similarly Defendant had ample opportunity to arrange for an alternative legal representation. His failure to do so cannot, in my view, be regarded as sudden change of circumstances. Defendant submitted further that because of change in his income as a result of his illness he has applied for Legal Aid assistance and was advised that the application might take about three weeks to be considered. No evidence was produced in Court of his application to the Legal Aid Board and the Legal Aid Board's response thereto.

[46] In his own version the Defendant submitted that he applied to the Legal Aid Board for legal assistance before but his application was rejected as he did not pass the means test. His income was above minimum threshold and his application was declined. However, because of change of income, so his submission goes, he was optimistic that his application would be considered favourably this time.

[47] In reply Mr Cole submitted that Defendant's optimism had no basis and is improbable for the simplest reason that Defendant failed to pass the means test to qualify for Legal Aid assistance. Moreover, so continued Mr Cole's submission, Defendant was sometime at the early stage of these proceedings represented by the Legal Aid Board but it withdrew its legal representation. Mr Cole presented as evidence in Court notice to defend and withdrawal by the Legal Aid which was marked as "Exhibit D". I agree with Mr Cole in this regard.

[48] On the facts before me, I am not convinced that waiting for another three weeks or so would have changed the situation. I am satisfied that the Legal Aid Board once represented Defendant and it withdrew upon realising that he did not qualify. Defendant himself conceded that the Legal Aid Board did, in fact, represent him but withdrew after he himself advised it that his income was above the threshold. In the circumstances it is less probable than not that the Legal Aid Board would, as Defendant wanted this Court to believe, consider his application favourably. In any event Defendant never produced any proof of such an application or the Legal Aid Board's response thereto.

[49] In these circumstances I find that it was incumbent upon the defendant to seek alternative legal representation upon terminating the mandate of his former legal representatives but he failed to do so.

[50] In the premises, Defendant's quest for a postponement on the ground of legal representation must fail. Defendant is the maker of his own bed and he must lie on it. The facts of this case are in all fours with *Centirugo AG v Firestone (SA) Ltd*[14] where the court dismissed an application for postponement on the ground that the applicant had sufficient time to arrange for other legal representation, but failed to do so. Nothing can be further from that truth.

[51] Having followed the above principles, I cannot find that it is in the interest of justice that this matter be further postponed. To the contrary, I find that it is in the interest of justice this matter be finalised, broader interests of the public require that the trial proceeds as scheduled.

[52] Plaintiff has strenuously opposed postponement of this matter to ensure that the matter proceeds on the scheduled date and that his right to a speedy resolution of this dispute is protected. I cannot agree more with Plaintiff in this regard. The interests of justice demand that this matter is finalised. In dealing with similar circumstances in

[14] 1969 (3) SA 318 (T)

McCarthy Retail Ltd v Shortdistance Carriers CC[15], Schutz JA said that 'a party opposing an application to postpone an appeal has a procedural right that the appeal should proceed on the appointed day. It is also in the public interest that there should be an end to litigation. Accordingly in order for an applicant for a postponement to succeed, he must show a "good and strong reason" for the grant of such relief...'

[53] In *Persadh and Another v General Motors SA (Pty) Ltd*[16]**,** Plasket J proposed that as that party seeks an indulgence he or she must show good cause for the interference with his or her opponent's procedural right to proceed and with the general interest of justice in having the matter finalised.

[54] On 15 October 2018 I granted an order dismissing the application for postponement and directing the defendant to pay the costs of that date. I also ordered that the parties prepare themselves accordingly for the trial to resume on 16 October 2018.

[55] A fact worth mentioning is that on 16 October 2018, Defendant, appearing in person once again, sought to regurgitate his application for postponement on the ground that he still wanted to see a Doctor and cannot proceed without legal representation. On account of the court refusing to revisit its order granted, he walked out and the trial proceeded in his absence.

Conclusion

[56] In the circumstances the order granted by this Court on 15 October 2015 shall stand.

[15] McCarthy Retail Ltd v Shortdistance Carriers CC [2001] 3 All SA 236 (A) para 28.

[16] 2006 (1) SA 455 (SE) at para 13,

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H. S. TONI

ACTING JUDGE OF THE HIGH COURT

Counsel for the plaintiff	:	Adv S. Cole
Instructed by	:	Wheeldom Rushmere & Cole Inc. GRAHAMSTOWN
For the defendant	:	In Person
HEARD ON	:	15 OCTOBER 2018
DELIVERED ON	:	22 OCTOBER 2018