IN THE SOUTH GAUTENG HIGH COURT

JOHANNESBURG CASE NO: 47213/09

DATE: 2011/11/09

In the matter between

HAFFEJEE, ISMAIL PLAINTIFF

and

MINISTER OF SAFETY AND SECURITY 1ST DEFENDANT

SENIOR SUPERINTENDENT SESHOKA 2ND DEFENDANT

INSPECTOR W F OLIVIER 3RD DEFENDANT

AUTOLUX (PTY) LTD t/a SUBARU MIDRAND 4TH DEFENDANT

J U D G M E N T

WILLIS J:

[1] The matter was set down for trial yesterday. The fourth defendant, Autolux (Pty) Ltd, trading as Subaru Midrand, yesterday brought an application for a postponement of the action *sine die*. The grounds upon which it relied were the following:

1. The plaintiff's expert notice was filed late on 31 October 2011.
2. The plaintiff's discovery affidavit filed on 16 August 2011

discovered three items only and thereafter there was a supplementary discovery affidavit filed on 19 October 2011, containing 83 additional items, which new documents did not correlate to items in the discovery affidavit.

3. The pre-trial conference was held a mere two weeks before the trial. There has been no pre-trial minute. The plaintiff is alleged to have failed to reply properly to a request for further particulars.
4. The defendants are of the view that the trial will endure for more than six days and accordingly there should be an application before the deputy judge president for a special allocation of the trial.

[2] The application for a postponement was supported by the first, second and third defendants. Yesterday, during the course of argument, Mr Omar submitted that the counterclaim had no merit whatsoever and had been lodged purely for purposes of delay and that the real, triable issue certainly would be disposed of in a matter of a few days. He also submitted that the other objections raised on behalf of the fourth defendant had no merit.

[3] It seemed to me yesterday that one should cut through the issues and determine whether there was substance in the allegation that the counterclaim had no merit whatsoever. This morning, Dr Heidi Erna Wolfsohn, who has a Master's degree from the Heinrich Heine Institute in Dusseldorf, Germany as well as a D.Com degree in forensics from the same institute testified. Her evidence obviously is purely for *prima facie* purposes, but it was to the effect that she had conducted an audit

of the books of the fourth defendant at the relevant time and it would seem, according to her researches, that the plaintiff did in fact owe the fourth defendant several million rands worth of money.

[4] There is no reason to doubt either Dr Wolfsohn's integrity or the accuracy of her conclusions. Of course, it may well be that the plaintiff's defence that he paid can be proven. This aspect that, according to the plaintiff, he paid certain sums of money to the fourth defendant, is not reflected in Dr Wolfsohn's audit report. The plaintiff relies upon the fact that, according to him, certain bank cheques drawn by ABSA bank were deposited into the accounts of the fourth defendant which bank cheques reflected payments made in effect by him, the plaintiff.

[5] During the course of Dr Wolfsohn's evidence this morning, it immediately became apparent, even to me as a judge who has not had the time to read all the documents or get on top of all the facts, that a critically relevant factor in determining whether the plaintiff's version is true or not, would be his own bank statements. In other words, if there were requests to ABSA to draw bank cheques to make payments on his behalf, that presumably would reflect in his own bank account. In other words, there would be a corresponding debit in his account for the bank cheque drawn to pay someone else on the plaintiff's instructions. That information is critically relevant.

[6] Mr *Morison*, who appears for the fourth defendant, correctly submitted that this ground alone, the matter was not ripe for trial. In other words, there would have to be a discovery of the plaintiff's own bank statements in order for the matter to proceed to trial so that these

issues may properly be ventilated.

[7] Yesterday, I was prepared to grant a postponement without making a costs order against any party. I was amenable simply to putting the costs in the pot, but I warned Mr Omar that if, after hearing the evidence in support of an application for a postponement today, I should have to grant a postponement, the plaintiff would be ordered to pay the costs. Such a costs order seems appropriate in all the circumstances. Valuable court time has been taken up to consider this matter.

[8] Mr *Morison* asked that the costs of two counsel be allowed. It cannot be considered extravagant, in the circumstances, to have employed two counsel. Without putting too fine a point on the matter, the defendant's case involves defending allegations of fraud and dishonesty. That is why the Minister of Safety and Security has been brought into the matter. There are reputations on the line. When it comes to defending a reputation, a court will be reluctant to rush to find that a litigant has been unduly cautious. Reputations matter. They are the lifeblood of commerce in the city.

[9] Accordingly, the following is the order of the Court:

1. The trial action is postponed *sine die*.
2. The plaintiff is to pay the defendants' costs of the application for a postponement, which costs are to include the costs of two counsel.

Counsel for the plaintiff: Zehir Omar.

Counsel for the first, second and third defendants: Advocate E Mailele.

Attorneys for the first, second and third defendants: The State Attorney.

Counsel for the fourth defendant: Advocate L J *Morison* SC (with him, E. *Mkhawane*).

Attorneys for the fourth defendant: Rina Caldeira.

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