



IN THE HIGH COURT OF SOUTH AFRICA

(GAUTENG DIVISION, JOHANNESBURG)

(1)	REPORTABLE: YES / NO
(2)	OF INTEREST TO OTHER JUDGES: YES/NO
(3)	REVISED.
	<u>30/6/2019</u>
DATE	SIGNATURE

CASE NO: 16084/2017

IN THE MATTER BETWEEN:

MARTECH (PTY) LIMITED

APPLICANT

AND

V-CELL CLINIX (PTY) LIMITED

RESPONDENT

JUDGMENT

SENYATSI AJ

SENYATSI AJ

- [1] This is an opposed application for postponement of the trial by the defendant.
- [2] The ground of postponement is that the only witness for the defendant is indisposed of due to ill health.
- [3] The defendant has tendered the wasted costs of postponement on the Regional Court Magistrate scale.
- [4] The plaintiff's counsel, Mr De Sai has made various submissions on why he feels the application should be rejected. I am not going to deal with all his submissions. He further contends that should the court deem it fit to consider the application favourably the costs should be at a High Court punitive scale as the defendant ought to have known that the witness, Mr Tayler would not be available for trial today.

- [5] Mr Masomane for the defendant contends that the Magistrate Court Scale costs would be appropriate as this matter ought to have been heard by the Regional Magistrate Court.
- [6] I have considered all the argument and have decided that it will not be in the interest of justice that this matter continues without the only witness for the defendant.
- [7] It is clear to me, based on the submissions made on behalf of the defendant that its counsel, Mr Mosomane was not aware that the defendant's only witness is indisposed of due to ill health. I say this because both him and Mr De Sai, assured me in chambers that their clients were ready with their only witnesses. They informed me that each party was going to tender the evidence of one witness.
- [8] That Mr Masomane spoke to Mr Tayler for the first time yesterday is neither here nor there when it comes to a determination whether or not a punitive scaled costs order should be made.
- [9] A medical certificate has been provided in support of the postponement application. It is not up to this court to question the authenticity thereof. In my view, the medical condition of Mr Tayler is on the face of the certificate.

[10] In view of these factors, the application to postpone the matter should be favourably considered.

[11] There cannot be denial that costs of the day have been incurred by the plaintiff. It is irrelevant whether the costs were incurred at a High Court or Magistrate Court's Scale. The fact is that the costs were incurred and should be awarded.

ORDER

[12] The following order is therefore made:

- a) The trial is postponed sine die.
- b) The defendant is ordered to pay the wasted costs on High Court party and party scale.



M.L. SENYATSI
ACTING JUDGE OF THE HIGH COURT OF SOUTH AFRICA,

GAUTENG DIVISION,
JOHANNESBURG

Appearances:

Date of hearing : 30 July 2019

Date of Judgment : 30 July 2019

For the Applicant : Mr De Sai

Instructed by : Yousha Tayob Attorneys, JHb

For first Respondent : Mr Masomane

Instructed by : Masomane Incorporated Attorneys, JHB