IN THE HIGH COURT OF SOUTH AFRICA,
GAUTENG DIVISION, JOHANNESBURG

CASE NO: 34004/2019

(1) REPORTABLE: ~~YES~~ / NO
(2) OF INTEREST TO OTHER JUDGES: ~~YES~~/NO
(3) REVISED.

23/08/2021
DATE

SIGNATURE

In the matter between:

PETER MTHANDAZO MOYO	Plaintiff
and	
OLD MUTUAL LIMITED	First Defendant
OLD MUTUAL LIFE ASSURANCE COMPANY (SA) LIMITED	Second Defendant
TREVOR MANUEL	Third Defendant
STEWARD VAN GRAAN	Fourth Defendant
THOKO MOKGOSI MWANTEMBE	Fifth Defendant
PAUL BALOYI	Sixth Defendant
PETER DE BEYER	Seventh Defendant
THYS DU TOIT	Eighth Defendant
SUZEKA MAGWENTSHU RENSBURG	Ninth Defendant
ALBERT ESSIEN	Tenth Defendant

ITUMELENG KGABOESELE	Eleventh Defendant
JAMES MWANGI	Twelfth Defendant
MARSHALL RAPIYA	Thirteenth Defendant
NOSIPHO MOLOPE	Fourteenth Defendant
JOHN LISTER	Fifteenth Defendant

Delivered: This judgement was prepared and authored by the Judge whose name is reflected and is handed down electronically by circulation to the Parties / their legal representatives by email and by uploading it to the electronic file of this matter on CaseLines. The date of the judgment is deemed to be 23 August 2021.

JUDGMENT

MALINDI J:

Introduction

[1] The first and second respondents shall be referred to as *"Old Mutual"*, and the third to fifteenth respondents as *"the Directors"*. Where they are referred to collectively they, will be referred to as the respondents.

[2] This matter has a relatively long and heated history. The current application came before this Court at what appears to be the crucial stage for all the live proceedings that have ensued between the parties to come to final adjudication, at least at Court of first instance stages.

[3] There are three relevant proceedings that require consideration in this application, which itself may be considered a fourth matter in the context. Although there is an appeal

pending between the parties to the Supreme Court of Appeal, it is of minor consequence in this application.

[4] On 27 September 2019 the applicant issued summons against the respondents wherein he claims reinstatement, alternatively contractual damages in the sum of R250 million arising from his suspension and the termination of his employment. Pleadings have closed and what remains is the holding of a pre-trial conference and perhaps compliances with certain aspects of the Uniform Rules of Court and the Practice Directives of the Commercial Court before a trial date is allocated.

[5] On 30 September 2019 the applicant instituted application proceedings in terms of section 162(5) of the Companies Act, 71 of 2008 ("the Act"), to have Old Mutual's non-executive directors of (*"the Directors"*), declared delinquent. Pleadings have also closed in this matter.

[6] On 12 August 2019 the applicant instituted a counterclaim for contempt of Court against the respondents (*"the contempt application"*). I leave out the technical aspects giving rise thereto. This application is, for all intents and purposes, also ready for hearing.

[7] I leave out traversing other interlocutory applications involved in the above three matters, and numerous case management conferences over the last two years, save the ones that are necessary to determine this application.

Management of the three proceedings

[8] As stated above, the trial action is almost ready for hearing. It has been designated a commercial dispute which has been referred to the Commercial Court under the jurisdiction of the High Court. It is under case management of a Judge and directives for

its expeditious hearing have been issued. Counsel for the applicant informed the Court that another Judge who is responsible for the broader management of cases as an Acting Deputy Judge President ("Acting DJP") has given an indication at one of the case management meetings that a trial date can be given before the end of this year. He couched it as the Acting DJP having given a *"guarantee"* to this effect. This information was not seriously challenged by counsel for Old Mutual and counsel for the Directors. A Judge has already been allocated to hear the matter.

[9] The delinquency application has also been allocated for hearing by a Full Court. The delinquency application and the trial were allocated as urgent Commercial Court cases. The contempt application, though not allocated to the Commercial Court, has always been treated as urgent by the inherent nature thereof. It has been allocated for hearing by the Acting DJP referred to above. All three matters have therefore been treated as urgent by such designation through case management and by the litigants themselves. For reasons that will be explained below when I deal with the application for postponement, the matters have only become ready for hearing recently although they enjoyed the status of urgency and could all have been heard during 2020.

Application for postponement

[10] On 10 April 2021 the applicant delivered a notice of motion headed *"Notice of Motion (Interlocutory Application(s)) for Postponement and Consolidation"*. He seeks the following orders:

> *1. Granting the postponement and/or stay of the hearing of the delinquency application instituted under case number 22791/2019 sine die and until a date falling after the hearing of the trial action instituted under case number 34004/2019, which date shall be nominated by the Honourable Judge President and/or Deputy Judge President."*
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> *2. That the contempt application brought and the delinquency application, separately instituted under case number 22791/2019, be and are hereby consolidated to proceed as one application."*

[11] As explained further by counsel for the applicant, if prayer 2 is granted, the effect will be that both the delinquency and contempt applications will be heard after the trial if prayer 1, seeking the postponement of the delinquency hearing is also granted. Hence the use of the term *"sequencing"* application in the same breath as postponement application. The alternative in terms of sequencing is that the consolidated applications be heard first and then the trial. This alternative is what the applicant, in effect, offered to the respondents in the morning of the hearing as a settlement offer. The Directors rejected this offer and persisted on the sequence of the delinquency application being heard first, without consolidation with the contempt application, as it is ready for hearing immediately and the contempt application not. Counsel for Old Mutual informed the Court that the offer had not been communicated to him and had therefore not taken instructions. That left their position of opposing the application unaltered. I do not wish to recapitulate how or why the miscommunication happened between counsel in this regard.

[12] The applicant's position is that the two applications must be consolidated to proceed as one whether before or after the trial.

[13] The applicant defines the nature of the application as follows:

> *"10. The first is application for relief in the form of an application for the postponement and/or stay of the main application to declare the 3rd to 15th respondents as delinquent directors under case number 22791/2019 ('the **delinquency application**"), sine die and/or to a date which must fall after the hearing of the trial action in the related matter brought by me as plaintiff under case number 34004/2019 ("the **trial action**").*
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> *11. The second is a separate and self-standing application for the consolidation of the aforesaid delinquency application and the similarly related application for contempt of court brought by me as applicant against the respondents, also under case number 22791/2019 ("the **contempt application**").*
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> *...*
>
> *13. The purpose and effect of the postponement application is to arrange the sequence of the hearings such that the trial action should be heard before the delinquency application, for the reasons more fully set out hereinbelow.*
>
> *14. The purpose and effect of the consolidation application is to have the delinquency application heard together with the contempt application, in accordance with the provisions*

> *of Rule 11 of the Uniform Rules of Court, irrespective of the outcome of the postponement application."*[1]

[14] The applicant refers to *"holding in abeyance"* or *"stay of the hearing"* several times. These circumstances usually arise when more than one proceedings arising from the same factual matrix or cause of action would cause prejudice to a party if both were to be heard separately. The situation arises in circumstances as when civil proceedings are ripe for hearing before criminal proceeding are, against the same person, and in typical cases where special pleas such as *lis pendens* or referral to alternative dispute resolution applies. In the first example, a Court may, on application by the accused in the criminal matter who is also a respondent in a civil matter, hold in abeyance or stay civil proceedings pending the outcome in criminal proceedings. This is done in order not to prejudice the accused in criminal proceedings by forcing them to plead a version in the civil proceedings which might expose him or her to a criminal sanction at a later stage. The current application is neither of this genre nor that of the second examples.

[15] This application is not one to stay proceedings because of some exceptional circumstances that have arisen. The classical circumstances for seeking a stay of proceedings is where a litigant would be prejudiced in subsequent proceedings if they are compelled to speak in the first proceedings. In *Du Toit v Van Rensburg*[2] the principle was stated as follows:

> *"(W)here civil proceedings and criminal proceedings arising out of the same circumstances are pending against a person it is the usual practice to stay the civil proceedings until the criminal proceedings have been disposed of."*

[16] In *Law Society, Cape v Randell*,[3] quoting Nugent J with approval in *Davis v Tip NO & Others*,[4] Mthiyane DP explained the principle to mean that the prejudice must relate to

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1 CaseLines 1-6 to 1-7: FA, paras 10 and 11.
2 1967 (4) SA 433 (C) at 435H.
3 2013 (3) SA 437 (SCA).
4 1996 (1) SA 1152 (W) at 1157D-E.

whether a party is compelled to disclose a defence or is compelled to say something that will prejudice them in subsequent proceedings. Furthermore, as regards the Court's discretion, the Court exercises a very limited discretion in scope and ambit because *"once the potential for prejudice has been established"* the Court intervenes in favour of granting the applicant to hold the proceedings in abeyance.

[17] There are other exceptional cases where a stay may be sought but I need not deal with them as none have been pleaded. The applicant herein has pleaded the state of impecuniosity and general wellbeing of him and his family as the prejudice he suffers. It is not that the version he will have to plead in one set of proceedings has a potential to prejudice him in the other. In the circumstances, I find that the applicant has not established a potential prejudice in terms of the subject matter of pleadings as required in *Randell.* This application is therefore strictly one of postponement.

[18] I deal now with the postponement application.

Requirements/factors for consideration in an application for postponement

[19] The applicant sets out factors for consideration of his application as: unforeseen circumstances, balance of convenience of the parties, the convenience of the Court and the administration of justice, and prejudice or lack thereof. They coincide with the well-known requirements that the applicant must show good cause, the applicant to be *bona fide*, that there be no prejudice to the respondents that cannot be remedied by an appropriate order as to costs, and the interests of justice.

[20] I will first dispose with the contention that unforeseen circumstances have led to this application being brought at this stage and the convenience of the Court. The respondents have severely criticised the applicant for his alleged dilatory conduct of these

proceedings being the *dominus litis*. They have also sought to discount coronavirus restrictions as sufficient to proffer a full and reasonable explanation for the delays. I agree with the respondents that the delays were caused by his litigation strategies and disappointing outcomes therein. They are not of the nature envisaged as a factor to be taken into consideration in an application for postponement. Furthermore, from April 2020 there was no meaningful response to persistent correspondence from the respondents regarding the prosecution of the delinquency application and the trial, both being under case management by one judge, until 17 December 2020 when the applicant raised his preference that the trial precede the delinquency application. To the extent that COVID-19 may have hampered the applicant, and I take judicial notice thereof, the applicant is required to at least explain how it did so. He does not. The real enquiry in such circumstances would be to see whether such delays are capable of punishment by an appropriate order as to costs.

[21] The applicant accepts that the ordinary sequence would have been for the delinquency and contempt applications to be heard separately and before the trial. I elaborate further on the applicant's failure to give a full and reasonable explanation. He avers that various turns of events have led to all three matters being not too far apart in their state of readiness for hearing.[5] As a result of these turns of events, including the arrival of the coronavirus pandemic on our shores, progress in expediting the two applications stalled. Given what the applicant calls *"new and unforeseen developments which took place between February and December 2020"*[6] he, through his attorneys, wrote a letter on 17 December 2020 to the respondents, through their attorneys, a letter which was a response to their letter of 16 November 2020. I reproduce the letter herein.

> *"1. We apologise for the delayed response to your letter dated 16 November 2020 due to logistical and time pressures on our side.*

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5 CaseLines 1-9 to 1-13: FA, paras 22 – 35.
6 CaseLines 1-13: FA, para 36.

> *2. After extensive consultations, analysis of the pleadings and seeking the necessary opinions it is our considered view that the sequence which will be most convenient, efficient and practical to the parties and the court will be for the trial action to be heard ahead of the delinquency application. Naturally both proceedings are based on the same factual complex and in so far as there is any possibility of disputes of fact in the application proceedings it would be better to deal with those as part of the oral evidence which will inevitably be led during the trial.*
>
> *3. We are also advised that there is a real possibility that, depending on the outcome of the trial proceedings, the delinquency application be rendered moot or at worst, capable of either settlement and/or a much more shortened hearing on limited issues. This will also result in a total or partial saving of costs and scarce judicial resources.*
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> *4. We are accordingly instructed to request that your clients seriously consider the above proposal and, if agreed, the parties can jointly approach Honourable Judge Wright with a revised timetable. Subject to the above, we are in broad agreement with the matters ought property to be heard as soon as possible and hopefully be finalised by the second or latest third term in 2021.*
>
> *5. We look forward to your response."*

[22] Various exchanges of correspondence took place between the parties, including the holding of further case management conferences in respect of both the trial and delinquency application. At the case management conference of 10 March 2021 there was an insignificant period of time between the dates on which the trial and delinquency applications would be heard. In a letter written by the respondents to the applicant on the same day, they recapitulated the salient points and directions given by the Judge.[7] A pre-trial conference was set for 31 May 2021 which would have resulted, in all probability, in a trial date being allocated before the end of the year seeing that it has been designated as urgent in the Commercial Court. Heads of argument in the delinquency application were to be filed by the end of June 2021.

[23] On 14 March 2021 the case management Judge enquired, through his Registrar, whether he could make an order by agreement that the trial be *"finally disposed of before the delinquency application is heard"*. He was minded to ask the applicant to launch an application to that effect if the parties do not agree to the sequence.[8] This prompted the applicant to ask whether the respondents agreed with the Judge's *"inclination"* upon

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7 CaseLines 1-59 to 1-60.
8 CaseLines 1-61.

which the respondents promptly responded that the judge had not expressed such an *"inclination"* in his email of 14 March 2021 and stated that they do not agree to the trial being disposed of before the delinquency application.

[24] After a few rounds of exchanges of correspondence and telephone exchanges between the attorneys, and with no agreement as to the applicant's preferred sequence, the current application was launched on 10 April 2021. As stated above, there is no explanation why these matters were not prosecuted between March and December 2020.

[25] Secondly, the balance of convenience between the parties has been described as balancing the interests of the parties so as to avoid either being put in a position of hardship needlessly and to avoid it being denied the right to put to finality the dispute between the parties. It is common cause between the parties that the multi-pronged proceedings have put a burden on all parties in more than one way. These proceedings are expensive and have consumed a lot of the litigants' time. The initiator of proceedings carries the burden to ensure the most efficient manner of disposing of proceedings that they have initiated. I have expressed a view already that the applicant's explanation for the delays is not adequate and is not reasonable. The respondents have argued that the balance of convenience should not favour the applicant when he has caused the delays and now the question as to which proceedings should be heard first.

[26] The purport of the Rules of Court, the Practice Manual and particularly, the Commercial Court Practice Directives are applicable herein.

[27] I am of the view that the Practice Manual and the applicable directives have been introduced precisely to force litigants and the Courts to be more efficient in the bringing of matters to court and the adjudication over them and to strict adherence to them. The Courts accept that they would be greatly inconvenienced in the pursuit of delivering swift

justice where the circumstances demand if cases are not closely managed. That has been demonstrated by the extensive case management endeavours that have been made in these matters. Several Judges, including the former Deputy Judge President, and several Acting Deputy Judge Presidents during different periods from 2020, have put themselves out to attend to these matters in addition to their normal and usually heavy judicial functions. Directions by case managing judges may be modified or even reversed in certain circumstances on request or by agreement between the parties. The provisions of Rule 27 should ordinarily be applicable here too.

[28] Counsel for the applicant submitted that this matter should be viewed in the context of the readiness of all three matters being concluded by the end of the year and therefore that not much more undue inconvenience will be suffered by the respondents. He submitted that the 2020 delays are irrelevant at this stage. This submission would have been strong if the trial directions had been adhered to fully and that there was more than the Acting Deputy Judge President's undertaking or guarantee that the trial would also be set down for hearing before the end of the year. Strict adherence with the Practice manual and Directives has been emphasised, not only in the Directives but a full judgment has had to be given in this regard.[9] Had this been achieved, it could be said realistically that not much prejudice would be caused to the respondents if the delinquency application were to be heard soon after the trial action. Revising or reversing some directions would make sense.

[29] However, the latest direction in relation to the trial that the pre-trial conference be held on 31 May 2021 (and which has not been held yet) has widened the time period between the imminent hearing of the delinquency application and the trial probably much later in the year or even early next year. Counsel for the applicant postulated the possibility of a hearing in the new year. In the circumstances, the respondents should not

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9 See *Chongqing Qingxing Industry SA (Pty) Ltd v Ye & Others* 2021 (3) SA 189 (GJ).

be put through the inconvenience of adding a few more months to the already lengthy period when they have not been able to arrange their affairs in the environment of clarity. The balance of convenience favours the respondents as a result.

[30] During argument and in the respective written submissions by the parties, it was common cause that considerations of prejudice will ordinarily constitute the dominant factor in considering whether to grant a postponement.[10] It predominates the other factors although they must all be taken cumulatively. There is a slight overlap between this requirement and balance of convenience to the parties.

[31] On the balance of convenience, the applicant states that the litigation has put him in a financially precarious position and that at this stage he would rather concentrate his efforts and the limited resources that he still has in pursuing the trial as a priority and the other proceedings thereafter.[11] He asserts that to the contrary, the respondents will suffer no inconvenience and that the requested sequencing will benefit the respondents as the outcome of the trial either way, will bring to an end what has been an inconvenience for the last two years.

[32] As to prejudice, the applicant adds to what he says regarding the balance of convenience between the parties that his general wellbeing and that of his family has been affected.[12] This must be viewed in the broad sense that the applicant was dismissed from a very high position, if not the highest, within the first respondent's organisation after being accused of egregious charges bordering on dishonesty. He concludes that the respondents have failed to demonstrate any prejudice on their part.

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10 *Myburgh Transport v Botha t/a SA truck Bodies* 1991 (3) SA 310 (NmS) at 315F-G.
11 CaseLines 1-18 to 1-20.
12 CaseLines 1-22: FA, para 79.

[33] On the other hand both sets of respondents have set out the prejudice they would suffer if the postponement was to be granted and a further few months be added to the already long period of prejudices that they have endured. Old Mutual avers that it is greatly prejudicial to it that its directors have been stigmatised by an allegation that they are delinquent directors guilty of the forms of misconduct set out in section 162(5) of the Companies Act. This prejudice will be perpetuated by a postponement when it could be dealt with immediately as the delinquency application is ripe for hearing.[13] It is indeed important that Old Mutual accounts to local and international regulatory bodies without the burden of its directors carrying the stigma of impropriety.

[34] The Directors set out the prejudice they continue to suffer at paras 89-91 of their answering affidavit.[14] These are an elaboration of their accountability to regulatory bodies in the financial and insurance sectors. They submit that their prejudice far outweighs the applicant's self-created prejudice, if any.

[35] It is true that the applicant has not offered any evidence to counter the prejudice suffered by both sets of respondents in their business, professional and personal respects. These unfortunately outweigh his financially capricious position that he now finds himself as the initiator of proceedings and his personal and family distressful circumstances. Whereas it can be readily accepted that this is like a David fighting a Goliath, as his counsel submitted, he has not shown that the Goliath has employed the *"tyranny of litigation"* upon him or abused the process of Court in any way in order to wear him down by litigating him out of Court.

[36] Even where the applicant has failed to show good cause, the Court still has to consider whether it is in the interests of justice to grant a postponement.[15] What is in the

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13 CaseLines 3-50 to 3-51: AA, para 39.2 – 39.4; CaseLines 3-30 to 3-31: para 19.
14 CaseLines 3-147 to 3-148.
15 *Shilubana and Others v Nwamitwa* 2007 (9) BCLR 919 (CC) para 11.

interests of justice is to be determined *"not only by what is in the interests of the parties themselves, but also by what … is in the public interest"*. As appears in *Shilubana* what is in the public interest will include considerations of *"the scope of the issues that ultimately must be decided"*. By this I understand to mean that the issues must be of importance not only to the parties but must also be of importance to the public.

[37] The scope of the issues to be decided in this case attach to the applicant's personal interests mainly, that is, the damages claim against Old Mutual. The two applications now occupy a secondary role in his quest to vindicate himself. Despite his counsel's strong argument in this regard, this requirement does not save the inadequacies of the application for postponement.

Exercise of the Court's discretion

[38] It is trite that the grant of a postponement is an indulgence within the wide discretion of the Court[16] which must be exercised judicially and properly.[17] As enjoined by the Constitutional Court in *Lekolwane*[18] the Court has to balance the conflicting interests of the parties. Whilst other requirements for a postponement may rate more important than others, they must all be considered cumulatively in order to meet the overriding requirement that the judgment must reflect both the need to bring litigation proceedings to finality expeditiously and the interests of justice that a matter should be fully ventilated.[19] The Rules of Court provide for the full ventilation of issues and procedure. They fulfil the constitutional requirement that the interests of justice must always be a consideration in these regards. These Rules give effect to section 173 of the

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16 *Lekolwane & Another v Minister of Justice and Constitutional Development* 2007 (3) BCLR 280 (CC) para 17.
17 *Myburgh* (*supra*) at 314G.
18 *Lekolwane* (*supra*) para 17.
19 *Persadh & Another v General Motors South Africa (Pty) Ltd* 2006 (1) SA 455 (SE) para 13.

Constitution.[20] The courts have specifically enumerated "interests of justice" and "in the public interest" in the non-exhaustive list of factors for consideration.[21]

[39] I conclude that the explanation given by the applicant does not meet the true requirements of a full and reasonable explanation and that it would not be in the interests of justice to grant him a postponement of the delinquency application as to do so would unduly prolong the prejudice that the respondents have suffered as a result of the applicant's failure to prosecute these matters as directed by the case managing judges.

Consolidation

[40] The respondents attack the application for consolidation of the delinquency and contempt applications as an embodiment of a delaying tactic. They see it as a means to have these applications heard after the trial so that Old Mutual and its Directors continue to bear the prejudice of being accused of being delinquent directors and contemptuous of the Court for as long as the applicant stretches proceedings out, and that he gains a tactical advantage by having the trial proceed first so that he can use the material arising therefrom in order to strengthen his case in the two applications.

[41] Counsel for the applicant has disavowed these averments and gave an undertaking from the Bar that his client will not do so and that the consolidation is sought strictly to achieve convenience, efficiency and cost savings.

[42] In *Mpotsha v Road Accident Fund & Another*[22] two actions based on different causes of action were consolidated on the basis that substantially, the same evidence

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20 *Randgold and Exploration Co Ltd & Another v Gold Fields Operations Ltd and Others* 2020 (3) SA 251 (GJ) para 133 – 141.
21 *Shilubana* (*supra*) para 10 – 11.
22 2000 (4) SA 696 (C).

will have to be led in both. The Court stated that consolidation would save costs and avoid a multiplicity of actions in the circumstances.[23] In order to achieve consolidation, the party seeking it bears the onus of persuading the Court that the consolidation will not cause substantial prejudice to the other party.[24]

[43] The objection by one of the defendants that it would be forced to stay in attendance at Court for a long period after the aspects relevant to it have been concluded thereby causing it inconvenience and prejudice, while it waits for the conclusion of the trial on aspects relevant to the second defendant, was rejected on the basis that there was a separation of issues as agreed and each half dealt with the defendants separately and therefore that the one does not have to be at court when aspects irrelevant to it were being ventilated.

[44] Those circumstances would not apply in the consolidation of the two applications herein. The applicant has identified the contempt allegations[25] and has bound himself to not supplementing them. As this is the only overlap with the allegations relevant to the delinquency application, it can be dealt with neatly and completed before the additional issues relevant to section 162(5) of the Act are dealt with.[26] Furthermore, the same parties and their legal representatives will remain at Court throughout because they are involved in both matters.

[45] The prejudice to the respondents which I have acknowledged in the postponement application will not endure for as long in respect of the period between the trial and the hearing of these applications as consolidated. In fact the prejudice would endure longer

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23 *Ibid* at 700G-H.
24 *Ibid* at 701C-D.
25 CaseLines 1-24 to 1-25: FA, par 89-90.
26 CaseLines 1-25: para 90.

if they were to be heard one after the other. As matters currently are, both applications are ripe for hearing.

[46] I am of the view therefore that on a conspectus of the application as a whole, the applicant has discharged the onus for consolidation to be granted and that the respondents will not suffer substantial prejudice thereby.

Costs

[47] Old Mutual seeks a punitive costs order against the applicant whatever the outcome on the scale as between attorney and client, as a mark of disapproval of his conduct. The conduct referred to is mainly his failure to prosecute these matters in 2020 and his changed attitude in 2021 regarding his lukewarm attitude about the applications and preference to prosecute the action ahead of them, thereby causing delays in the hearing of the delinquency application, in particular.

[48] In my view the applicant's non-compliances were not motivated by a desire to delay proceedings in order to gain any advantage by having the trial proceed first. His lethargy during 2020 led to a situation where the closeness of the hearings in all matters made it convenient to rather spend his resources on the trial and consider later whether to pursue the two applications. A punitive costs order would be inappropriate in the circumstances.

[49] The settlement offer made by the applicant, besides not having been conveyed to Old Mutual, will not affect the costs order as it has not resulted in an order affecting the outcome in his favour.

[50] I therefore make the following order:

1. The application for granting the postponement and/or stay of the hearing of the delinquency application instituted under case number 22791/2019 *sine die* and until a date falling after the hearing of the trial action instituted under case number 34004/2019, is dismissed.

2. The contempt application and the delinquency application, separately instituted under case number 22791/2019, are hereby consolidated to proceed as one application.

3. The applicant is to pay the costs of the application on a party and party scale, including the costs of two counsel where engaged in respect of the first and second respondents and the third to fifteenth respondents.

4. The applicant is to pay the wasted costs of 5 May 2021 on a party and party scale, including costs of two counsel where engaged by the first and second respondents and third to fifteenth respondents.

G MALINDI
JUDGE OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG LOCAL DIVISION
JOHANNESBURG

COUNSEL FOR THE APPLICANT:D Mpofu SC and N Motlwenya (Heads of argument drawn by D Mpofu SC, T Ngcukaitobi SC and S Gaba)

INSTRUCTED BY: MABUZA ATTORNEYS

COUNSEL FOR FIRST AND SECOND RESPONDENTS: IV Maleka SC and N Mayet

COUNSEL FOR THIRD TO FIFTEENTH RESPONDENTS: G Marcus SC and M Stubbs

INSTRUCTED BY: BOWMAN GILFILLAN INC

DATE OF THE HEARING: 17 August 2021

DATE OF JUDGMENT: 23 August 2021