IN THE HIGH COURT OF SOUTH AFRICA,

GAUTENG DIVISION, JOHANNESBURG

CASE NO: 2019/21688

(1) REPORTABLE: NO

(2) OF INTEREST TO OTHER JUDGES: NO

2/8/2023 [redacted]

DATE SIGNATURE

In the application by

EMERALD SAFARI RESORT (PTY) LTD	APPLICANT
and	
BARTIE, AMANDA	RESPONDENT

In re the matter between

BARTIE, AMANDA	PLAINTIFF
and	
EMERALD SAFARI RESORT (PTY) LTD	DEFENDANT

JUDGMENT

MOORCROFT AJ:

Summary

Judge President's Consolidated Practice Directive of 11 June 2021, as revised – paragraphs 38 and 39 – failure to file joint practice note – matter struck from roll – Liability for wasted costs

Order

[1] In this matter I make the following order:

1. *The respondent (plaintiff) is ordered to pay the wasted costs occasioned by the removal of the matter from the trial roll on 11 April 2022;*
2. *All other costs, including preparation costs, remain reserved for determination by the trial court;*
3. *The respondent is ordered to pay the costs of this application.*

[2] The reasons for the order follow below.

Introduction

[3] The parties have locked horns in civil litigation in the Johannesburg High Court and the trial was set down for 11 April 2022. The trial was however removed and the trial date forfeited because of non-compliance with paragraphs 38 and 39 of the Judge President's Consolidated Practice Directive of 11 June 2021, as revised, in that a joint practice note was not uploaded timeously. Paragraphs 38 and 39 in the revised Practice Directive read as follows:

> *"38. The Parties shall upload, in the correct section, a JOINT PRACTICE NOTE after a special pre-trial conference, at which the logistics of conducting the trial are addressed, was convened. If a Plaintiff cannot obtain cooperation from a Defendant, the Plaintiff must upload its own practice note and explain why a joint practice note was impossible to be composed. A Defendant may in this instance elect to upload its own practice note and explain why a joint practice note was impossible to be composed. Lack of co-operation by either Party shall attract punitive orders by the Court.*
>
> *39. The practice note must be uploaded by not later than 5 court days before the set-down date.*[1] *If no practice note is timeously uploaded, the matter shall automatically be removed and the date forfeited. If the practice note is non-compliant with the practice manual or this directive, the matter shall be automatically removed and similarly the date forfeited. This directive shall be strictly applied."*

[4] Compliance with the Practice Directive promotes efficiency and serves the interests

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1 The Directive was amended on 8 July 2022 to provide that the joint practice note must be uploaded "*by not earlier than seven days before the set-down date and not later than 5 court days before the set-down date.*"

of litigants, the Courts, the administration of justice, and of the public.

[5] During the preparation phase it was agreed in this matter that the plaintiff would upload an evidence bundle to CaseLines 6 weeks prior to the trial date and the defendant would supplement by not later than 5 weeks prior to the trial date. It is common cause however that on 4 April 2022 the plaintiff had not yet uploaded an evidence bundle. The plaintiff who was *dominus litis* also did not arrange for a further pretrial conference and for a joint practice note.

[6] On Monday, 4 April 2022 at 12h03, five days before trial, the defendant's attorney sent a proposed joint practice note to the plaintiff's attorney by electronic mail. It was pointed out in the accompanying email read at 13h19 that the joint practice note was due that same day.

[7] The respondent's attorney only reacted late on the afternoon of the 4th of April 2022 (at 16h40) and proposed amendments to the draft joint practice note. The attorney took no steps to finalise the joint practice note timeously so that it could be uploaded as required by the Directive.

[8] The plaintiff's attorney now blames the defendant for sending its proposed joint practice note in PDF format rather than in a format that could be edited, and for sending it only on the last day instead of a few days earlier. It was however only the defendant's attorney that took steps to procure a joint practice note and the plaintiff's attorney did not assist.

[9] A joint practice note was not uploaded and the matter was automatically removed from the roll. The defendant now seeks an order that the plaintiff be ordered to pay the wasted costs, inclusive of preparation costs in respect of the trial set down for hearing on 11 April 2022, on the scale as between attorney and client, as well as the costs of the application on the scale as between attorney and client.

[10] The plaintiff correctly argues that the responsibility to file a joint practice note lies with both parties. Both parties are indeed responsible for uploading a joint practice note but the plaintiff is *dominus litis.* The defendant took active steps on 4 April 2022 to prepare

the joint practice note and the failure to have it filed timeously lies with the plaintiff.

[11] The plaintiff accuses the defendant of lack of *bona fides* and argues that the costs could have been argued at trial, and that the present application has delayed the finalisation of the trial[2] and merely incurred additional costs for both parties. It is indeed so that the defendant could have argued the costs at trial but the defendant cannot be faulted for seeking a cost order at this stage. The defendant's approach cannot be interpreted as an abuse of the process. The defendant is entitled to its costs.

[12] The defendant seeks cost on a punitive scale and also seeks cost of preparation for trial. In my view there is no case made out for punitive costs and the cost of preparation for trial is not wasted costs. The defendant is therefore entitled only to the wasted costs of the appearance on 11 April 2022 and on the ordinary scale.

[13] For the reasons set out above I make the order in paragraph 1.

J MOORCROFT

ACTING JUDGE OF THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION

JOHANNESBURG

Electronically submitted

Delivered: This judgement was prepared and authored by the Acting 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 **2 AUGUST 2023**.

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[2] It was explained in argument that the CaseLines program does not allow for the allocation of a trial date while there is a pending interlocutory application. This is a programming problem and not a principle of law.

COUNSEL FOR THE APPLICANT:	W A DE BEER
INSTRUCTED BY:	WHALLEY VAN DER LITH INC
COUNSEL FOR THE RESPONDENT:	R J STEVENSON
INSTRUCTED BY:	CLARK ATTORNEYS
DATE OF ARGUMENT:	25 JULY 2023
DATE OF JUDGMENT:	2 AUGUST 2023