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IN THE HIGH COURT OF SOUTH AFRICA

(NORTH GAUTENG HIGH COURT, PRETORIA)

CASE NO: 36314/13

DATE: 29-08-2016

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In the matter between

SAHRC

Applicant

15 and

JQ DUBLILA

Respondent

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J U D G M E N T

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MOSHIDI J: I have a difficult decision to make in this matter. I have before me an application... An interlocutory application for the postponement of the trial set down from today 29 August 2016 up to 9 September 2016. The postponement application is brought by, what I shall call simply, the respondent in the Equality court proceedings, or the applicant in the consolidated constitutional challenge., ie., Mr. Jon Qwelane. The grounds for the postponement are almost exclusively the ill health of Mr. Qwelane. The present medical condition of Mr. Qwelane has been fully set out in the

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medical reports and confirmatory affidavit of his treating physician, Dr. Sedat.

The interlocutory application is opposed by the South African Human Rights Commission and the second *amicus curiae*, ie, the Psychological Society of South Africa. I have, during the adjournment, given careful  
5 consideration to both the merits and demerits of the application and the opposing submissions made in respect thereof. Indeed the only negative aspect of the application is the fact that the founding affidavit in support of the application for a postponement, was served on the opposing parties last night, I believe, or early this morning, but at least also given to the court this  
10 morning before the commencement of the proceedings.

However Mr. Qwelane's attorneys of record had made the interested and affected parties aware of his health condition already by last week Thursday 26 August 2016 and indicating the possibility, or necessity for a postponement of the trial. As a consequence, some of the parties involved in  
15 the litigation have indicated that the application will either not be opposed today, or they will abide by the court's decision. The concessions, in my view, have been well made and are reasonable.

The ill health of Mr. Qwelane as described by Dr. Sedat, not only has a long history, but it is also grave on the face thereof. The prognosis of the  
20 patient is also not on the bright side. I am not persuaded that any further and independent medical examination of Mr. Qwelane, as suggested in argument, will bring him to the trial today, or even in the immediate future. I am equally not persuaded that any answering affidavits opposing the application without the physical examination of Mr. Qwelane will likely, or  
25 probably alter his physical and mental condition.

It is not unusual for trials to be postponed, or adjourned due to the ill health of a party, or a witness thereto. See for example *Myers v Greef* which is spelt M.Y.E.R.S. v Greef, G.R.E.E.F 1950 (1) SA 105 (E). The principles regarding the consideration of applications of this nature have also been well  
5 spelt out in cases such as *Mineback Transport v Botha trading as Truck Bodies* 1991 (3) SA 310 (Nm) Supreme Court at 314 to 315.

In the exercise of my discretion I have considered all the aspects of this matter including the question of possible prejudice to the other parties as well as the main consideration which is the interest of justice and the reasons  
10 for Mr. Qwelane's absence and inability to be involved in the proceedings today.

I have come to the difficult conclusion that the application is indeed well made and grounded. It is also based on common human nature, or what is commonly called, *ubuntu*, or *botho*. It is in my view a *bona fide*  
15 application. It does not appear at all to me that the application is a delaying tactic, or in order to gain some sort of advantage over the other opposing parties. I am rather loath to be presiding over a trial whereat one party with significant interest in the litigation, has to be so-called dragged out of their sick bed in order to proceed, or participate in the proceedings. For these  
20 reasons the application must succeed at this stage. I also find that the alternative means of proceeding with the trial now, are truly more practical, or viable in the circumstances.

There should be no order as to the costs of the application which, in any event, is a discretionary matter. In the result I make the following order:

**ORDER**

1. The trial is postponed *sine die*.
2. There is no order as to costs.

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