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IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION, PRETORIA)

Case Number.: 80511/2017

(1) REPORTABLE: NO
(2) OF INTEREST TO OTHER JUDGES: NO

.....
E.M. KUBUSHI

DATE: 16-02- 2021

In the matter between:

PASSENGER RAIL AGENCY OF SOUTH AFRICA

Applicant

and

S[....] A[....] T[....] obo W[....] B[....] T[....]

Respondent

JUDGMENT

KUBUSHI J

This judgement is handed down electronically by circulating to the parties' representatives by email and by uploading on Caselines.

[1] The issue for determination in this opposed application for postponement is whether or not the postponement should be granted on the ground that the applicant is not prepared for trial.

[2] The factual background leading to the application is common cause between the parties. The respondent issued summons on behalf of his minor child W[....] B[....] T[....], for damages suffered by the said minor child when the driver of the train on which the minor child was a passenger, drove off whilst the minor child was alighting from the train. As a result, the minor child fell from the train to the ground and suffered injuries.

[3] Summons was issued on 24 November 2017 and the matter was certified trial ready on 21 June 2019. A trial date was obtained for 5 June 2019 but on the said date the applicant was not ready to proceed with the trial and the matter was postponed by agreement with the applicant ordered to pay the wasted costs. The matter was again certified trial ready on 21 June 2019 and was set down for trial on 20 April 2020. Due to the COVID-19 pandemic and related directives the matter was automatically removed from the roll.

[4] The matter was again placed on the roll for 25 June 2020 but the applicant brought a similar application for postponement on the day of the trial. One of the reasons raised by the applicant for the application for postponement was the

difficulty in finding the train number that was allegedly involved in the incident. The court roll was during that week overcrowded and the matter was automatically postponed to 15 February 2021. On Friday 12 February 2021, the applicant filed an application for postponement.

[5] The parties held a pre-trial meeting once more on 10 February 2021 at which no indication was given that the applicant intends to apply for a postponement.

[6] The respondent filed his opposing papers on 15 February 2021 — the day of the trial and requested an indulgence to file his answering affidavit. The answering affidavit was filed on 16 February 2021 together with heads of argument, the applicant having filed its heads of argument on 15 February 2021.

[7] It is common cause that the applicant delivered its request for further particulars on 27 May 2019 in which it requested the respondent to furnish it with the particulars of the train in which the respondent alleges the minor child to have been a passenger. The respondent delivered his reply to the request for further particulars on 10 March 2020.

[8] There is no dispute that the applicant is to blame for the delay in requesting the number of the train from the respondent, that is, in respect of the period between the time when the summons was issued on 24 November 2017 and its request for further particulars which was delivered on 27 May 2019. Which is a period of more than two years. On the other hand, the respondent delayed in responding to the applicant's request for further particulars and is, therefore, to blame for the

period between the time he received the request for further particulars on 27 May 2019 and the date he replied to the request for further particulars on 10 March 2020. Which is the period of about eleven months.

[9] The reason for the applicant's failure to obtain the particulars of the train involved is said to be because at the time when the applicant received information to search for the particulars of the train, the officials of the applicant were on lock down.

[10] The applicant has applied for a postponement of the hearing on the basis that it is not ready to proceed because it could not identify the witnesses who are the train crew as it does not know the train in respect of which the respondent alleges the minor child to have been a passenger. In essence, the principle bases for the application is the fact that the applicant needs to find the train number and, therefore, the train, allegedly involved in the incident.

[11] The respondent opposes the application for postponement for, amongst others, the following reasons:

11.1. The applicant knew that it does not have the particulars of the train in which the respondent alleges the minor child to have been a passenger from the time it received the summons and therefore the applicant should have raised an exception or dealt with the issue during the pleadings stage.

11.2. The applicant should be able to obtain these particulars electronically.

[12] I am inclined to allow the postponement on the ground that to a certain extent, the respondent also contributed to the applicant's unpreparedness for trial. It took the respondent about eleven months to answer to the applicant's request for further particulars. By the time the reply to the further particulars was received by the applicant, the lockdown regulations were in force. There was therefore nothing that the applicant could have done within that time.

[13] However, due to the number of times the matter has been postponement previously, and at sometimes at the instance of the applicant, and the fact that this matter must come to finality, the postponement I am granting should be a final postponement. The applicant must endeavour to avail itself of the information it requires to proceed with trial before the next date of hearing, failing which this matter will have to proceed without that information.

[14] The applicant has offered to pay the wasted costs of the postponement in the event the postponement is granted. Such wasted costs, as argued by the respondent, should include the two days reserved for this matter as *per* the pre-trial meeting and the court roll. This will, in a way, alleviate the prejudice to be suffered by the respondent due to the postponement.

[15] I make the following order:

1. The application for postponement is granted.
2. The applicant is ordered to pay the wasted costs which costs shall include the two days reserved for the hearing of this matter.

E.M KUBUSHI
JUDGE OF THE HIGH COURT,
GAUTENG DIVISION, PRETORIA

Appearance:

Applicant's Representative	: Mr. B. Shabangu (Attorney)
Appellant's Attorneys	: Maholobela Incorporated Attorneys
Respondent's Counsel	: Adv. W.J Burger
Respondent's Attorneys	: Ledwaba Mazwai Attorneys
Date of hearing	: 15 February 2021
Date of judgment	: 16 February 2021