



IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

(1) REPORTABLE: ~~YES~~ / NO

(2) OF INTEREST TO OTHER JUDGES: ~~YES~~ / NO

(3) REVISED

DATE

SIGNATURE

CASE NO: 87983/19

DATE: 1 FEBRUARY 2022

In the matter between:-

INTERNET FILING (PTY) LTD

Applicant

and

BUSINESS CONNEXION (PTY) LTD

First Respondent

XET GROUP (PTY) LTD

Second Excipient

XET SOLUTIONS (PTY) LTD

Third Respondent

PTPI GROUP (PTY) LTD

Fourth Respondent

CITY OF EKURHULENI METROPOLITAN MUNICIPALITY

Fifth Respondent

JUDGMENT

SKOSANA AJ

[1] This matter came before me as an opposed motion set down for hearing on 24 January 2020. The 5th respondent drove the set down of the main application. After reading through a great deal of the papers, I allocated the main application for hearing on Wednesday, 26 January 2022. During Saturday 22 January 2022, I learnt, as I was continuing to peruse the papers that the applicant had uploaded a substantive application for postponement. The postponement application was later opposed by the fifth respondent which filed an opposing affidavit followed by a replying affidavit by the applicant.

[2] It is important to note that the main application consisted of over 1000 pages of papers excluding the application for postponement. Only the fifth respondent had filed heads of argument in respect of the main application.

I have already made an order postponing the main application *sine die* and mulcting the applicant with the wasted costs occasioned thereby.

[3] In the request for reasons for my order by the fifth respondent, the only motivation made was that the parties need to know how to proceed further with the matter, the postponement having been granted. I am not going to deal in detail with every contention raised in the application for postponement nor do I see a reason for doing so.

[4] The contention by the applicant in support of the postponement application was that the matter had not been properly set down in accordance with the relevant practice directives¹ which requires that before a matter is set down, the party applying for such set down should not only ensure that heads of argument are filed by the other parties but also compel them to do so by a court order. The other practice directive allegedly not complied with was in relation to a set down of the matter of this magnitude, which requires a hearing for more than a day, to have been set down without the involvement and approval of the Deputy Judge President. It is noted that the main matter has several sets of counsel.

[5] The fifth respondent contended in the main that the practice directives relied upon by the applicant were invalid because first, they had not been published in the Government Gazette as required by section 8(5)(b) of the

¹ Practices directive 2 of 2020 dated 14 January 2020 and the consolidated directive dated 11 June 2021.

Superior Courts Act 10 of 2013 (“the Act”). Second, that they had been superseded by directives passed thereafter particularly during the restrictions under the State of Disaster Act 57 of 2020. Third and finally, that directive 2 of 2020 restricts and/or negates Rule 6(5)(f) of the Uniform Rules as contemplated and forbidden by the Supreme Court of Appeal decision of the **NDPP**².

- [6] I find no merit in the fifth respondent’s contentions. On the first point, section 8(4)(a) of the Act clearly contemplates that the powers relating to judicial management of judicial functions vest not only in the Chief Justice but also in the heads of courts who may delegate such functions to other judicial officers. Moreover, section 8(4)(b) provides:

“(b) The management of the judicial functions of each court is the responsibility of the head of that court.”

- [7] In my view therefore, the directives issued by the heads of court and/or Judges President are not affected by the requirement of publication in the Gazette as sub-section (5) confines itself to the one issued by the Chief Justice. Only the designation in respect of the Chief Justice’s judicial leadership functions as referred to in section 8(7) is affected by such publication.

² Ex parte: NDPP [2021] ZASCA 142

- [8] For this reason I find this point as ill-conceived.
- [9] On the second point, counsel for the fifth respondent conceded that there is no express repeal of the practice directives relied upon by the applicant in the subsequent ones. I do not see any purpose for the repeal of such practice directives even during the COVID-19 restrictions. This point is similarly without merit.
- [10] On the third point, it is my view that the practice directive does not negate or restrict the provisions of Rule 6(5)(f). What the practice directives do is to make the requirements of the Rule more realistic and workable. Its rational is to prevent the clogging of the courts roll by matters which are not ripe for hearing. It provides for the dismissal of the claim or defence in the event of the ultimate failure to provide heads, a course that the fifth respondent seeks to pursue outside such directive.
- [11] I am not impressed by the argument that, since heads of argument are not expressly required by the Rules as in appeals, therefore the practice directive may not require them or instruct a party to compel another to submit them. It is now trite that the Rules are for the court and not the court for the rules. This brilliant judicial adage is subverted by the fifth respondent's contention in this regard. If the Rules are there to assist the court and the heads of argument serve the same purpose, then the court

may adjust their application in order to make them effective in that regard. It is absolutely fair and preferable to do such adjustments uniformly through practice manuals and directives rather than through individual court pronouncements.

[12] In the light of the above, I find the fifth respondent's contentions without merit. The party who sets the matter down must comply with all the applicable practice directives. Nothing was said of the requirement to seek the Deputy Judge President's approval in this matter before the application for set down. Having perused a large portion of the papers in this matter, I am of the view that this latter requirement was also applicable but not complied with, which made the postponement inevitable. The argument that heads are not a requirement in the Rules is bizarre to say the least. If these parties are allowed to participate without the filing of heads, chaos would ensue. The absence of the heads by the applicant and the other parties does not assist the court and does not make the hearing shorter.

[13] I exercised my discretion on costs against the applicant for the following reasons:

[13.1] It is clear that the applicant has unduly delayed the finalization of the matter by failing to file its replying affidavit over a prolonged

period and despite numerous demands from some of the respondents. This no doubt frustrated the prompt finalization of this matter.

[13.2] While the notice of set down was served on the applicant as early as 20 October 2021, it only sought a postponement in January 2022, a few days before the hearing of the matter. This was not only costly but also a grave inconvenience to this court.

[14] It is for these reasons that I made the order.

DT SKOSANA

ACTING JUDGE OF THE HIGH COURT

Appearances:

Counsel for the Applicant:

Adv A Bishop

Instructed by:

Petersen Hertog Attorneys
c/o PEV Smith Inc.

Counsel for the First to Third Respondents:

Adv M Musandiwa

Instructed by:

Motsoeneng Bill Attorneys

Counsel for the Fourth Respondent:

Adv J Kaplan

Instructed by:

Roy Suttner Attorneys

Counsel for the Fifth Respondent:

Adv J Peter SC

Adv K Mokotedi

Instructed by:

Tomlinson Mnguni James Inc.

c/o Lotze & Roux Attorneys

Counsel for the Third Party:

Adv T Marolen

Instructed by:

Cliffe Dekker Hofmeyer Inc.

Date heard:

26 January 2022

Date of Judgment:

1 February 2022