



OFFICE OF THE CHIEF JUSTICE
REPUBLIC OF SOUTH AFRICA

**IN THE HIGH COURT OF SOUTH AFRICA
(WESTERN CAPE DIVISION, CAPE TOWN)**

CASE NUMBER: A63/2021

In the matter between:

SHANNON PETERSON

Appellant

And

THE STATE

Respondent

POSTPONEMENT JUDGMENT DATED 11 AUGUST 2021

KUSEVITSKY, J

[1] This is an application for a postponement of a Full Bench criminal appeal which was set down for hearing on 21 July 2021. In terms of the Notice of Set Down, the Appellant's heads of argument had to be filed by Monday, 24 May 2021 at the Office of the Director of Public Prosecutions as well as at the office of the Registrar of this Court. The Respondent's heads of argument had to be filed by Monday, 14 June 2021.

[2] On 7 June 2021, the Respondent filed a notice of intention to strike the appeal from the roll, as the Appellant had failed to file the heads of argument at all. On 19 July 2021, i.e. two days before the hearing of the matter, the Appellant filed an application for a postponement of the matter.

[3] In the affidavit deposed to by the attorney of record, Mr. Mbeko Venfolo, he *inter alia* indicated that the lack of compliance with the notice of set down was as a result of a failure by the family of the Appellant to place him in funds in order to continue with the prosecution of the appeal. He further stated that he had unsuccessfully attempted to make telephonic contact with the family to inform them of the set down date.

[4] Mr Venfolo states that on 14 July 2021, he was surprised when he was contacted by the Appellant's father, who had enquired about the date of the appeal. A consultation was arranged and the family was thereafter informed of the set down date and that if they were desirous of continuing with the prosecution of the appeal, that they were required to place him in funds in order for counsel to be briefed to argue the matter.

[5] He further states that counsel was accordingly briefed on 15 July 2021. This delay, he submits necessitates the application for the postponement in order for counsel to properly prepare for the appeal and file the necessary heads of argument.

[6] What is concerning in this matter is the manner in which this appeal was dealt with by the attorney for the Appellant and the total disregard for the rules of court. This matter was set down on 21 April 2021 and allocated to three Judges to hear the appeal, with a record of 778 pages, on 21 July 2021. On the attorney's own version, he did not have contact with the family until 14 July 2021, a good two months after the heads of argument had to be filed. At no point during this time, did the attorney write to the office of the Registrar indicating that he was unable to contact the family of the Appellant and that the possibility existed that the appeal would not be able to proceed and that in all likelihood, it would have to be postponed.

[7] The attorney furthermore failed to consider that given the fact that three Judges were required to read the record of appeal during the recess period, that common sense and courtesy dictated that a letter to the Senior Judge, indicating the above difficulties, would have been necessary so that valuable time could have been spared in reading the record.

[8] The failure, in my view, by the attorney to have notified the relevant persons and officers of court, indicates an utter disregard for the Court and the Judiciary, and this general lackadaisical attitude and erroneous perception that time periods can simply be disregarded and the relevant papers simply handed up to court on the day of the hearing or on the day before, should not be countenanced.

[9] It is trite law that postponements are merely not there for the asking. Where a party seeks an indulgence of the court, he or she must show good cause for the interference with his or her opponent's procedural right to proceed and with the general interests of justice in having the matter finalised. The court is also entrusted with a discretion as to whether to grant or refuse the indulgence.¹ In the unreported judgment of *Keegan Press v Premier of Gauteng*², Boruchowitz J had occasion to deal with a postponement where the delay was on the part of the defendant's attorney, the State Attorney, for preparing for trial. The court commented,³ that the inability or lack of preparedness of the second defendant in that case was entirely due to the inaction of its attorneys handling the matter on its behalf and that in general, this could not form the basis of a postponement.

[10] In *casu*, this is an appeal by the Appellant against his sentence, with leave having been granted by the Supreme Court of Appeal. It is in the interests of justice for the Appellant in this instance, that a postponement be granted and for the appeal to be prosecuted as soon as possible. This court will therefore retain the file and postpone the matter in order for the parties to fully comply with the following order below.

¹ Persadh and Another v General Motors South Africa (Pty) Ltd 2006 (1) SA 455 (SECLD)

² Case 11345/OS delivered 2 November 2007

³ At para 14 of the judgment

Order:

1. The Full Bench appeal is postponed to Wednesday, 27 October 2021.
2. The Appellant shall file his Heads of Argument by 15 September 2021.
3. The Respondent shall file its heads of Argument by 29 September 2021.

DS KUSEVITSKY

**Judge of the High Court, Western Cape
Division**

I agree, and it is so ordered:

T NDITA

**Judge of the High Court, Western Cape
Division**

I agree:

N MANGCU-LOCKWOOD

**Judge of the High Court, Western Cape
Division**

Counsel for Applicant: Advocate Filan

Instructed by: Venfolo Attorneys

Counsel for Respondent: Advocate M Blows

Instructed by: NDDP