

SOUTH AFRICA / JUDGMENT

Dlamini v Fidelity Security and Another (14690/2018) [2025] ZAGPJHC 263 (4 February 2025) [2025] ZAGPJHC 263

COURT

South Gauteng High Court, Johannesburg

BEFORE

Crutchfield

CASE / FILE NUMBER

14690/2018

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IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG LOCAL DIVISION,
JOHANNESBURG
CASE
NO: 14690/2018

DATE:

04-02-2025
(1) REPORTABLE: NO.
(2) OF INTEREST TO
OTHER JUDGES: NO.
(3) REVISED.
4 February 2025
In the matter between
CLEMENT DLAMINI
Plaintiff
and
FIDELITY SECURITY
First Defendant
MINISTER OF
POLICE
Second Defendant

JUDGMENT

CRUTCHFIELD, J: This matter comes before me on trial on Tuesday, 4 February 2025.

The plaintiff, Mr Clement Dlamini, seeks damages against the Minister of Police, the second defendant, for unlawful arrest and detention.

The plaintiff withdrew the action against the first defendant, the Fidelity Security, and the matter proceeds against the Minister of Police only. The Minister is defending the action, duly represented by the state attorney and counsel. The trial is set down for hearing commencing on 4 February 2025.

The plaintiff, at the commencement of the hearing, sought a postponement of the matter in order to obtain legal representation to assist him in the trial. The Minister's counsel did not object to the postponement but sought the wasted costs of the postponement. The plaintiff was previously represented by NemaKanga Attorneys. The latter issued summons and prosecuted the matter on the plaintiff's behalf until 31 January 2025. On that date, 31 January 2025, NemaKanga Attorneys delivered a notice of withdrawal of attorneys of record. As a result of NemaKanga's Attorneys withdrawal on behalf of the plaintiff, the plaintiff finds himself on trial before me without legal representation to assist him. It is apparent that if it were not for the late withdrawal by NemaKanga Attorneys, the matter would proceed before me and run to finalisation of the trial.

The Minister's counsel very properly informed me that the Minister had not uploaded an amended plea and that the notice of intention to amend was delivered on 16 January 2025.

The Minister's amendment to the plea caused the plaintiff's attorneys to object to the defendant's notice of intention to amend on 17 January 2025.

Given that the plaintiff is without legal representation and seeks an opportunity to procure legal representation, I am left with no option but to postpone this trial in order for the plaintiff to obtain such legal representation.

The issue before me is the wasted costs of the postponement. I required the representative of NemaKanga Attorneys who acted on behalf of the plaintiff prior to NemaKanga Attorneys' withdrawal, to make himself available before me on 4 February 2025.

I required an explanation from NemaKanga Attorneys as to the lateness of the withdrawal, an explanation as to why in the event that the trial has to be postponed, I should not order punitive costs against NemaKanga Attorneys and why I should not order that NemaKanga Attorneys not be entitled to debit any fees against the plaintiff in respect of their services in this matter.

NemaKanga Attorneys' representative, Mr Rasodi, appeared before me. It appeared from his address that the reason for the withdrawal was a breakdown in the relationship between the plaintiff and NemaKanga Attorneys.

A consultation was held between the plaintiff and Nemakanga Attorneys on 27 January 2025 pursuant to which it became apparent that the relationship, the attorney client relationship, had deteriorated to the extent that the attorneys were entitled to withdraw their representation in respect of the plaintiff. As a result, Nemakanga Attorneys delivered their notice of withdrawal as the plaintiff's legal representative on 31 January 2025.

On 20 January 2025, in accordance with the practice of this court, the plaintiff's attorneys uploaded a practice note indicating that the matter was ready to proceed. This was notwithstanding that on 16 January 2025, the defendant made available various relevant documents and served a notice of intention to amend the defendant's plea. The notice of intention to amend resulted from the plaintiff's amended particulars of claim dated 22 October 2018.

Accordingly, the Minister waited in excess of six years to amend his plea consequent on the plaintiff's amendment of its particulars of claim. The amended particulars of claim are uploaded on CaseLines on 14 May 2021 almost four years prior to the date of trial.

In addition, the relevant documentation served by the defendant includes such documents as the full docket and the various registers relevant to this matter.

It is apparent that the documents served by the defendant played a part in the deterioration of the relationship between the plaintiff and Nemakanga Attorneys.

In the light of the content of those documents, it is apparent that the documents, including the defendant's notice of intention to amend, should have been delivered to the plaintiff's attorneys far earlier than occurred.

The plaintiff's attorneys at the time, Nemakanga Attorneys, failed however to bring proceedings to compel the defendant to make proper discovery and accordingly the fault for the postponement lies with both the plaintiff's attorneys and the state attorney on behalf of the Minister. Both parties are at fault and have contributed to the necessity for this matter to be postponed.

In the event that the Minister had delivered the documents timeously, the necessary consultations could have been held between the plaintiff's attorneys and the plaintiff at a far earlier stage. If the documents had been delivered earlier, the notice of withdrawal would potentially not have been uploaded one day prior to the date of the trial proceeding.

In the circumstances I am inclined and I intend to order that each party be liable to pay their own wasted costs of the postponement.

Notwithstanding, Nemakanga Attorneys are warned that it is not appropriate to upload and deliver a notice of withdrawal as attorneys of record one day prior to a trial proceeding. Such conduct serves to prejudice the proper functioning of the courts and the proper administration of justice.

As to the fees debited by NemaKanga Attorneys in respect of the plaintiff, I was informed by Mr Rasodi that the firm dealt with this matter on a contingency basis and that in the circumstances, they will not be debiting any fees against the plaintiff nor will they be recovering any fees from the plaintiff.

I am grateful to counsel and the attorney for the defendant, the Minister of Police, in this matter for their assistance in dealing with the postponement and the costs of the postponement. Their conduct was extremely proper and I am thankful to them.

In the circumstances, I grant the following order:

ORDER

1. The trial is postponed sine die.
2. Each party is ordered to pay its own costs resulting from the postponement of the trial.

CRUTCHFIELD, J

JUDGE OF THE HIGH COURT

DATE: 4 February 2025.

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