

SOUTH AFRICA / JUDGMENT

Engen Petroleum Ltd v Nirghin (21822/2022) [2023] ZAGPJHC 1150 (4 October 2023)

[2023] ZAGPJHC 1150

COURT

South Gauteng High Court, Johannesburg

BEFORE

Yacoob

CASE / FILE NUMBER

21822/2022

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IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG LOCAL DIVISION, JOHANNESBURG

CASE NO: 21822/2022

DATE: 04-10-2023

In the matter between

ENGEN PETROLEUM LTD Plaintiff And DHEWENTHRA NIRGHIN Defendant

J U D G M E N T

YACOOB, J:

- - - - -

The applicant seeks payment from the respondent on the basis of a suretyship agreement. There is no dispute of fact regarding the indebtedness. The indebtedness has been acknowledged by the main debtor who has been liquidated. The only issue raised by the respondent in the answering affidavit is the contention that the suretyship agreement has prescribed, and the suretyship agreement clearly has not prescribed nor can it.

There is therefore, no reason not to grant the money judgment. The applicant also seeks costs on an attorney and client scale, because the last time the matter was enrolled it was enrolled on the unopposed roll in September 2022 and on the eve of the hearing the respondent filed an answering affidavit, which, as I have noted, does not disclose any substantive defence. The contention of the applicant is that the filing of the affidavit was simply a delay tactic.

This morning before the hearing at approximately nine o'clock I received heads of argument from the respondent's counsel which intimated that an application for postponement would be made. The basis of the application was apparently that new documents had come to light which may show that there was a claim for reckless credit. However, no affidavit was filed, no proper application was made, and there is no evidence before this Court. According to submissions made from the Bar, the information on which this postponement is purportedly based must have always been known to the respondent as it included evidence of meetings which the respondent had attended.

There is therefore, absolutely no reason why the information was not previously included in the affidavit or why the application for postponement was not properly made and in good time. Even if the documents came to the legal representative's attention at the beginning of this week, taking into account that the matter was set down for hearing from Monday, they could have filed an affidavit setting out briefly the grounds. They failed to do so. I am unable to find that there is any case made out for postponement, and I tend to agree with the applicant's contention that this is simply yet another delay tactic.

For these reasons, I will grant costs on the attorney and client scale.

I grant an order in terms of the draft.

YACOOB, J

JUDGE OF THE HIGH COURT

DATE: 12/10/23

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Prepared on 11 October 2026 · Esheria