

SOUTH AFRICA / JUDGMENT

Roxstar Global Consulting (Pty) Ltd v Stark (17291/24) [2025] ZAWCHC 252 (19 June 2025) [2025] ZAWCHC 252

COURT

Western Cape High Court, Cape Town

BEFORE

RK Parker

CASE / FILE NUMBER

17291/24

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FLYNOTES: CIVIL PROCEDURE – Interdict – Confidential information – Consultancy agreement terms – Clearly obligated respondent to return confidential information – Refusal constituted a breach warranting judicial intervention – Clear right established – Actual or apprehended injury proven due to refusal to return information – No adequate alternative remedy – Postponement application dismissed due to inadequate justification and dilatory conduct – Ordered to return all confidential information.

IN THE HIGH COURT OF SOUTH AFRICA

(WESTERN CAPE DIVISION, CAPE TOWN)

CASE NO: 17291/24

REPORTABLE

In the matter between:

ROXSTAR GLOBAL CONSULTING (PTY) LTD

Applicant

and

CELINE STARK

Respondent

REASONS IN TERMS OF RULE 49(1)(b)

RK PARKER AJ

Introduction

[1] What follows are the reasons for an order delivered on 4 March 2025.

In addition to the request for reasons in terms of rule 49(1)(b), the respondent also filed an application for leave to appeal. However, the reasons will be furnished whereafter the application for leave to appeal will be considered to give the parties an opportunity to file heads of argument should it be so desired, alternatively, for both parties to argue the leave to appeal on a date to be agreed upon in due course.

The application

[2] The main application was brought on an urgency basis in terms of rule 6(12) on 18 August 2024 and set down for hearing on 10 October 2024, whereafter an order was granted in terms of which the application was postponed by agreement between the parties to 7 February 2024 on the semi urgent roll. The applicant seeks to enforce the terms of an agreement in terms of which the respondent is required to return confidential information belonging to the applicant.

[3] The applicant operates in a travel and events market, providing concierge services and personalized travel planning. The respondent runs a company called Coco Corporate which offers a range of corporate consultancy services and on this basis, the respondent rendered services to the applicant including the provision of social media and administrative related services. The parties thereafter concluded a consultancy agreement on 9 February 2023.

The consultancy agreement

[4] The consultancy agreement contained detailed provisions including that the respondent would have access to the applicant's clients, network, suppliers, brands, partners, models and other confidential information. Applicant relies on terms of the agreement, particularly that the respondent would immediately at the applicant's request return all originals, copies, reproductions and summaries or extracts of the confidential information or at the applicant's option destroy such originals, copies, reproductions and summaries or extracts and certify the destruction thereof.

[5] This applicant says, this was acknowledged by the respondent in terms of various provisions contained in the agreement. Furthermore, the respondent undertook that she would not during the duration of the agreement and after its termination contact any of the applicant's contacts or conduct business or attempt to conduct business with any contact of the applicant, including concluding transactions with any contact of the applicant to, whether oral or in writing nor provide any quotations or services with any of the applicant's employees.

[6] The contractual relationship between the parties was terminated by mutual consent.

Respondent's refusal to return confidential information

[7] Following applicant's request for the return of the confidential information, the application was launched against the respondent which contained relief against the respondent for the return of all confidential information, within 24 hours, which became the order delivered on 4 March 2025 under paragraph 2 thereof, the content of which are:

7.1 Guest lists with contact information for corporate events.

7.2 Contact lists for clients, travel agents and other industry contacts.

7.3 Personal information of clients.

7.4 Login information and passwords to all trade portals of every hotel chain and supplier chain, partner companies and platforms. This is particularly sensitive, confidential and valuable information.

7.5 Directing the respondent to reinstate the Canva link and shared folder drives belonging to the applicant.

7.6 Directing the respondent to permanently delete all data shared between the Respondent, her affiliates and/ or designates, such data to include originals, copies, reproductions and summaries or extracts of any confidential information belonging to the applicant.

[8] The interdict which was granted under paragraph 3 of the aforesaid order followed the prayers as contained in the Notice of Motion served as an interdict against the respondent. Of importance to the applicant was that respondent had access to shared folders, which was also not granted, hence the application is needful to reinstate the applicant's access to such shared folder.

[9] The application was foreshadowed by a written demand which was met with resistance as the respondent believes that she was not under any contractual obligation to return the confidential information. In her opposition, she embarked on attacking the grammatical construction of the agreement opining that it was only countersigned on the 2 of August 2023.

[10] However, no answering affidavit was filed by the respondent.

Postponement

[11] On 7 February 2025 at the hearing of the application, the respondent sought an interlocutory application brought on urgency and seeking condonation for the non compliance with the court rules, for a postponement of the main application for an interdict and ancillary relief to a future date. In addition, respondent was seeking leave to make application for condonation of her late filing of her answering affidavit on a date to be determined in the future. This interlocutory application was opposed by the applicant on the basis that essentially, the respondent's conduct has been dilatory.

- [12] The affidavit annexed to the interlocutory application was deposed to by the legal representative of the respondent in her efforts to seek a postponement to be afforded a “reasonable opportunity to properly consult with our offices and Counsel, in preparation not only of the Respondent’s answering affidavit but the necessary application for condonation for the late filing thereof” in circumstances where the legal practitioner received instructions via email, on 30 January 2025 to render legal services. However, the legal practitioner was only available on 3 February 2025 due to her international travel.
- [13] In her affidavit, the legal practitioner says that respondent was not able to furnish her erstwhile legal representatives with instructions as the respondent was travelling abroad in Dubai and Amsterdam in November – December 2024. Furthermore, the erstwhile attorneys were not appointed by the respondent, but rather her ex boyfriend, and when the respondent’s relationship with the ex-boyfriend ended, she believed the main application would “simply fall away”.

Evaluation

- [14] In exercising a request for the postponement, the court has to exercise its discretion whether to grant the application or not. Importantly, postponements are not merely for the asking. It has to be properly motivated and substantiated.[1] The applicant in the main application argued that the following considerations must be taken into the decision whether or not to

grant a postponement:

14.1 First, as the parties seeking a postponement seeks an indulgence, he or she must show good cause for the interference with his or her opponent’s procedural rights to proceed and with the general interest of justice in having the matter finalized.

14.2 Second, the court is entrusted with a discretion as to whether to grant or refuse the indulgence.

14.3 Third, a court should be slow to refuse a postponement where the reasons for the applicant’s inability to proceed has been fully explained, where it is not a delaying tactic and where justice demands that the party should have further time for presenting his or her case.

14.4 Fourth, the prejudice that the parties may or may not suffer must be considered.

14.5 Fifth, the usual rule is that the party who is responsible for the postponement must pay the wasted costs.

Inordinate delay

- [15] The applicant has shown that the respondent that s/he has:

15.1 filed her notice of intention to oppose on 26 September 2024.

15.2 on 10 October 2024, an order was granted by agreement postponing the matter on 27 February 2025 on the semi urgent roll together with a structured timetable to allow the parties a time period for the filing of an answering affidavit, replying to affidavit and the heads of argument.

15.3 the attorneys of record for the respondent have filed the notice of withdrawal on 4 November 2024.

15.4 the respondent's current attorneys filed a notice of intention to oppose on 3 February 2025.

15.5 the postponement application was filed on 6 February 2025.

[16] The affidavit in support of the postponement application is deposed to by the attorney of record for the respondent and not by the respondent herself. Furthermore, the respondent fails to account for her failure to take any steps between 10 October 2024 and 3 February 2025 to advance the conclusion of the matter. The only explanation for the extensive delay is that the respondent was travelling abroad in Dubai and Amsterdam during November and December 2024, as reasons for her not being able to provide her erstwhile attorneys with meaningful instructions. No confirmatory affidavit is filed by the respondent or her erstwhile attorneys of record.

[17] In this global world, no explanation is provided as to why a consultation could not take place virtually. More importantly, the applicant argued that the instructions given to the erstwhile attorneys were that given by the respondent's ex-boyfriend, and she believed that when she broke up with her ex-boyfriend, the respondent believed that the application would simply fall away. I agree with the applicant that being abroad and thinking that the application would simply fall away does not constitute sufficient explanation for the granting of a postponement.

Compliance with the court order

[18] It cannot be ignored that the respondent herself failed to file an answering affidavit timeously. At the time the order was granted, the respondent was legally represented and remained legally represented until after the date her answering affidavit was due. No affidavit has been provided by the respondent's erstwhile attorneys of record as to what instructions they were able to get from the respondent with regard to the filing of an answering affidavit. Furthermore, in the postponement of the matter to the semi-urgent roll was done by agreement between the parties indicating that there had to be a measure of urgency to the matter.

Condonation

[19] The purpose of the postponement is contingent upon condonation being granted, in the event that an answering affidavit is manifestly out of time. In this matter, the respondent only seeks leave to bring a condemnation application in due course.

[20] In this regard, I agree with the applicant that the respondent did not at this stage seek condonation for the late filing of the as-of-yet non-existent affidavit, and should such condonation be refused in due course, the postponement will be rendered moot.

Merits

[21] The respondent misconstrues the nature of the applicant's application. Firstly, the applicant does not seek to interdict the respondent from trading. Secondly, the applicant is seeking to interdict the respondent from competing unlawfully with it by misusing the applicant's proprietary information. Thirdly, the applicant is not seeking to enforce a restraint of trade agreement. Fourthly, the applicant does not seek payment of money but the return of its confidential and proprietary information.

[22] The pitfalls in the respondent's case are that she has not taken the court into her confidence by presenting the court with her version. The potential defence raised in the affidavit in support of the postponement is not the respondent's version but rather the views of the respondent's legal representative.

[23] What the applicant is seeking is clearly found in the agreement. There is no escaping that nowhere is the validity of the agreement disputed by the respondent under oath.

[24] It is so that the longer the delay; the greater the prejudice is to the applicant and which prejudice cannot be cured by a costs order. As long as the information is being withheld by the respondent, the applicant alleges that it continues to suffer reputational and economic harm. At this stage, the applicant could not indicate the quantification of such harm, and the extent of the reputational harm suffered. It must be borne in mind that the applicant is not seeking damages at this stage.

[25] In considering whether the court exercised its discretion in refusing to grant a postponement, the court heard the respondent's

arguments on the nature of the discretion being exercised in a judicial manner, namely that the postponement must always be bona

fide and not used simply as a tactical manoeuvre for the purpose of obtaining an advantage to which the applicant is not legitimately

entitled. On the balance of convenience or inconvenience to both parties is a factor which should be considered and more importantly,

the broader public interest should be considered. In citing the Constitutional Court in *Lekolwane v Minister of Justice and Constitutional Development*, [2] one must look at the applicant's prospects of success on the merits.

[26] As to mere delay is not a nail in the coffin in every circumstance where fundamental fairness and justice justify a postponement, the court may in an appropriate case allow such an application for a postponement even if the application was not so timeously made.[3] It

was on this basis that just as delayed is justice denied and the prejudice suffered by the applicant can only be cured by a hearing on the merits and accordingly, that postponement was refused and that proceeded to hear the application. Accordingly, the postponement was dismissed.

- [27] Condonation cannot be asked for the mere asking, a party seeking condonation must make out a case entitling it to the court's indulgence. It must show sufficient cause, "...this requires a party to give a full explanation for the non-compliance with the rules or court's directions. [4]

Requirements for the final interdict

- [28] The key principles for a final interdict are grounded in *Setlogelo v Setlogelo*, [5] including three essential requirements that an applicant must satisfy to obtain a final interdict. Firstly, a clear right. The applicant must demonstrate they have a legally recognized right that is being threatened or infringed. Secondly, an injury actually committed or reasonably apprehended. The applicant must show that the right has been or will likely be infringed if the interdict is not granted. Thirdly, no alternative remedy. The applicant must show that there is no other adequate remedy available, such as damages to protect their right.
- [29] Relying on *East Rock Trading 7 (Pty) Ltd and Another v Eagle Valley Granite (Pty) and Others* [6], the court laid out the well-established requirements for obtaining a final interdict, in reaffirming the three essential elements that an applicant must prove to be granted a final interdict.

Material disputes of

facts

- [30] The respondent advanced that there were material disputes of fact where the applicant at paragraph 24, on its own version, admits that the dispute of the validity of the consultancy agreement had already arisen prior to the launching of the application for final relief. I do not agree. The respondent's full reliance on *Rail Commuters Action Group v Transnet Ltd t/a Metrorail* [7] is misplaced. I am not convinced that the material dispute of fact has arisen on the papers as a result of the interdict being granted.
- [31] The respondent is the author of her own misfortune in her attempt to seek a postponement caused by her own delay. For the reasons foreshadowed, the application for the postponement was refused and the hearing argument on the order was granted.

Costs

- [32] There are no reasons to depart from making a costs order in line with the clauses referred to above. Accordingly, costs on the attorney-client scale are justified.
- [33] In the circumstances, the following order is made:

1. The Respondent's application for a postponement in order to bring a condo-nation application for the late filing of her answering affidavit is dismissed.
2. The Respondent is directed, within 24 hours of the granting of this order, to return all confidential information belonging to the applicant, including but not limited to:
 - 2.1 Guest lists with contact information for corporate events.
 - 2.2 Contact lists for clients, travel agents and other industry contacts.
 - 2.3 Personal information of clients.
 - 2.4 Login information and passwords to all trade portals of every hotel chain and supplier chain, partner companies and platforms. This is particularly sensitive, confidential and valuable information.
 - 2.5 Directing the Respondent to reinstate the Canva link and shared folder drives belonging to the Applicant.
 - 2.6 Directing the Respondent to permanently delete all data shared between the Respondent, her affiliates and/or designates, such data to include originals, copies, reproductions and summaries or extracts of any confidential information belonging to the Applicant.
3. The Respondent is interdicted from:
 - 3.1. Contacting any of the Applicant's contacts whose information formed part of the confidential information referred to in paragraph 2 above;
 - 3.2. Concluding any transactions or agreements with any of the applicant's contacts whose information formed part of the confidential information referred to in paragraph 2 above;
 - 3.3. Conducting business, or attempting to conduct business, with any contact of the Applicant whose information formed part of the confidential information referred to in paragraph 2 above;
 - 3.4. Providing any quotes or services of whatsoever nature to any contact of the Applicant whose information formed part of the confidential information referred to in paragraph 2 above; and
 - 3.5 Using the services of, doing business with, employing or engaging any contact of the Applicant for purposes of circumventing the applicant and which will result in the Applicant being prevented from realising an introduction fee or commission.
4. The Respondent is directed to provide proof, within 24 hours, of deletion of such originals, copies, reproductions and summaries or extracts, as contemplated in paragraph 2 above.
5. The Respondent is to pay the costs of this application, including the costs of the postponement application.

ACTING JUDGE OF THE HIGH COURT

PARKER AJ

Appearances:

Applicant's Counsel: Adv Paula Gabriel

Applicant's Attorney: Angela Beeby Attorneys

Respondent's Counsel: Adv K L Kloppe

Respondent's Attorney: Dolata Clement & Co Inc.

Hearing Dates: 7 & 11 February 2025

Judgment

Date: 19 June 2025

This judgment was handed down electronically by circulation to the parties' representatives by email.

[1] Psychological Society of South Africa v Qwelane and Others 2017 (8) BCLR 1039 (CC), see paragraph 4 page 2 applicants opposition to postponement.

[2]

[2007] ZACC 14; 2007

(5) SA 620 (CC) at 624 E-F 2

[3] Myburgh Transport v Botha t/a SA Truck Bodies 1991 (3) SA 310 (Nms) at 315-D 317

[4] Grootboom v National Prosecuting Authority 2014 (2) SA 68 CC para 23

[5] 1914 AD 221

[6] 2011 JDR 1832 (GSJ)

[7] 2003

(6) SA 349 (A) at 368 C-D; 368G-H

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