

SOUTH AFRICA / JUDGMENT

**Wibbelink and Another v The Unkown Individuals
entering and/or Trespassing and/or Settling and/or
Building on the Immovable Property Known as
Portion [...] of ERF [...] Jan Niemand Park and Others
(64145/2021) [2022] ZAGPPHC 642 (31 August 2022)
[2022] ZAGPPHC 642**

COURT

North Gauteng High Court, Pretoria

BEFORE

Ndlovane

CASE / FILE NUMBER

64145/2021

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IN

THE HIGH COURT OF SOUTH AFRICA

GAUTENG

DIVISION, PRETORIA

Case

No: 64145/2021

REPORTABLE:

NO

OF

INTEREST TO OTHERS JUDGES: NO

REVISED

5

SEPTEMBER 2022

In

the matter between:

GERT
WIBBELINK FIRST
APPLICANT
MACHIEL
BERNING SECOND
APPLICANT
and
THE
UNKNOWN INDIVIDUALS ENTERING FIRST
RESPONDENT
AND/OR
TRESPASSING AND/OR SETTling
AND/OR
BUILDING ON THE IMMOVABLE
PROPERTY
KNOWN AS PORTION [...] OF
ERF
[...] JAN NIEMAND PARK
CITY
OF TSHWANE METROPOLITAN MUNICIPALITY SECOND
RESPONDENT
SAM
NETSIANDA THIRD
RESPONDENT

JUDGMENT

NDLOKOVANE AJ

INTRODUCTION

[1.] This matter came before me as an opposed motion set down for hearing on 24 January 2020. The essence of the main application was an order sought by the applicants, seeking confirmation of the rule nisi granted by the Honourable Maumela J on 1 April 2022 on 29 March 2022 with return dated of 1 June 2022, which return date was extended by the Honourable Mbongwe J on 30 May 2022 to 25 July 2022 and further extended by myself to 27 July 2022.

[2.] The crux of which is inter alia as follows that: The third respondent Mr. Sam Netsianda be joined as a Third Respondent in the Application; that the First and Third Respondent/s are interdicted from entering and/or settling and/or trespassing and/or building on Portion [...] of Erf [...] Jan Niemandpark (the "Immovable Property"); The First and Third Respondent/s are interdicted from demarcating and/or selling any stands and/or rooms and/or units on the Immovable Property; The Sheriff of the above Honourable Court is mandated and ordered to remove any building materials from the Immovable Property .

[3.] The First and Third Respondents opposed this application. Subsequently, the First and Third Respondents filed reasons as to why the rule nisi should not be made final as late as 30 May 2022, being the day before the initial return date. The Second Respondent has filed a notice to abide as well as an explanatory affidavit setting out its reasons for abiding by the Honourable Court's order. All the parties have filed concise heads of arguments.

[4.] Before I could determine the confirmation of the rule nisi or not, the counsel for the third respondent, from the bar informed me that he holds instructions to seek postponement to secure the services of a senior counsel who was not available for hearing on that day. The same senior counsel during consultation had hinted that papers might have to be amended. This was opposed by the applicants, citing the following reasons for such an objection unnecessary delay and their right to have the matter finalised owing to the nature of the relief sought and the history of the matter.

[5.] On the hearing date, pursuant to the hearing the submissions from both parties' legal representative in respect of the quest for a postponement, I stood the matter down to further afford the parties an opportunity to take instructions, to see whether they can find one another in respect of the issues for determination. Despite that, no instructions was forthcoming on the side of the third respondent, instead, the counsel for the third respondent informed the court that his mandate was terminated with immediate effect. In the light of the aforesaid background, and the consideration of the nature of the application I reserved judgement in respect of the postponement application. It is that application that arises for determination.

[6.] 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. This means, the party seeking postponement must proffer good and strong reasons therefore and that the applicant must give full and satisfactory

explanation of the circumstances that give rise to the application. The application itself must be bona fide and must not be used as a tactical endeavour to obtain an advantage to which the applicant is not entitled.

[7.] 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.

[8.] Postponements in the High Court are regulated by Rule 41 of the Rules of Superior Courts Practice (the Rules) and any postponement is always at the discretion of the Court. The Court has a discretion to grant or refuse a postponement. The guiding principle is only that in granting or refusing a postponement the court should exercise its discretion judicially and after considering

what is fair and just to both parties and balancing the interest of justice. The discretion must not be exercised capriciously or upon any wrong principle but for substantial reasons. In *Psychological Society of South Africa v Qwelane and others* the Constitutional Court held:

“In exercising its discretion, a court will consider whether the application has been timeously made, whether the explanation for the postponement is full and satisfactory, whether there is prejudice to any of the parties and whether the application is opposed. All these factors will be weighed to determine whether it is in the interests of justice to grant the postponement. And, importantly, this Court has added to the mix. It has said that what is in the interests of justice is determined not only by what is in the interests of the immediate parties, but also by what is in the broader public interest.”

[9.] In the present case the third respondent made the application for postponement orally and not in a substantive form. Despite the fact that the third respondent had known since May 2022 about the set down of the matter at the time the rule nisi was extended, he failed to secure the services of a senior counsel and this cannot be blamed on the applicants. The matter was properly set down for hearing and was ripe for hearing for the opposed week of 25 July 2022.

[10.] In the premises, third respondent's quest for a postponement on the ground of legal representation of a senior counsel must fail. The third respondent is the maker of his own bed and he must lie on it. The facts of this case are in all fours with *Centirugo AG v Firestone (SA) Ltd*, where the court dismissed an application for postponement on the ground that the applicant had sufficient time to arrange for services of senior counsel, but failed to do so. Nothing can be further made from that truth.

[11.] Having followed the above principles, I cannot find that it is in the interest of justice that this matter be further postponed. To the contrary, I find that it is in the interest of justice this matter be finalised, broader interests of the public require that the matter proceeds as it was properly enrolled in accordance with the directives of the abovementioned honourable court.

[12.] The applicants has strenuously opposed postponement of this matter to ensure that the matter proceeds on the scheduled date and that their right to a speedy resolution of this dispute is protected. I cannot agree more with the applicants in this regard. The interests of justice demand that this matter is finalised. It is also in the public interest that there should be an end to litigation. Accordingly in order for an applicant for a postponement to succeed, he must show a “good and strong reason” for the grant of such relief..’

[13.] In the circumstances I make the following order:

13.1 the rule nisi extended to shall stand and the parties are directed to approach the office of the DJP for a preferential date and have the matter ventilated and the issue of costs reserved.

N NDLOKOVANE AJ

ACTING JUDGE OF THE HIGH COURT

Delivered: this judgment was prepared and authored by the judge whose name is reflected and is handed down electronically and by circulation to the parties/their legal representatives by email and by uploading it to the electronic file of his matter on Caselines. The date for handing down is deemed to be 31 August 2022

APPEARANCES

FOR THE APPLICANT: ADV. R. ELLIS

FOR THE RESPONDENT: MR DENNISON

DATE OF HEARING: 28

JULY 2022

DATE OF JUDGMENT: 31 AUGUST 2022

[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

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Prepared on 11 October 2026 · Esheria