

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG

Case Number: 14103/2020

(1)	REPORTABLE: NO
(2)	OF INTEREST TO OTHER JUDGES: NO
(3)	REVISED: YES
<u>2 June 2025</u>	<u>[REDACTED]</u>
DATE	SIGNATURE

In the matter between:

ALTON PAUL

Plaintiff

and

**RONALD BOBROFF & PARTNERS INCORPORATED
(UNDER CURATORSHIP)**

Defendant

JUDGMENT

CRUTCHFIELD J

- [1] This trial matter comes before me on the morning of 2 June 2025. Upon the matter being called, the defendant informed me that the defendant intended to seek a postponement of the trial. The plaintiff indicated that it was willing to agree to the postponement of the trial subject to a tender for the payment of the wasted costs on the part of the defendant. The latter, the defendant, was

not prepared to tender the wasted costs of the postponement. The parties duly represented by counsel proceeded to argue the postponement before me.

- [2] The rules of a postponement take cognisance of the need for parties to have at their disposal all of the necessary information required by the relevant parties to place the matter fully and properly before a court. The purpose of the rule is to prevent matters being dealt with piecemeal and that all the relevant issues should be dealt with in a single hearing. The matter before me bears a 2020 case number but it is evident from argument placed before me that the matter has a long history going back at least as far as 2016.
- [3] In respect of the application for a postponement, the defendant detailed the chronology relevant to the request for a postponement commencing with a request for discovery in terms of Rules 35(3) and (6) on 16 September 2024. That was followed by an application to compel a reply to the Rule 35(3) request dated 14 November 2024 and a request for further particulars by the defendant dated 15 November 2024.
- [4] The order that the plaintiff furnish its reply to the request for discovery in terms of Rule 35(3) was granted on 3 December 2024. The order provided that the plaintiff should comply with the order to discover within 10 court days from the date of that order. The plaintiff did not comply and did not furnish its discovery in terms of the order within 10 court days, delivering seven lever arch files to a value of R16 000.00 paid by the defendant, on 8 May 2025.
- [5] The trial was set down for hearing on 2 June 2025. The defendant argued that the prejudice to the defendant and the reason ultimately for the request for the postponement of the trial was not the lateness of the delivery of the seven lever arch files of documents, but the fact that having perused the seven lever arch files, the defendant's attorneys together with the defendant's counsel determined that they required the oral evidence of various attorneys and others, being the authors of various correspondence contained in the seven lever arch files together with the authors of various file notes contained in the seven arch files. The authors of the correspondence and the various file notes,

being attorneys, were not immediately willing to come to court in order to give evidence, a fact that is not unsurprising.

- [6] As a result, the defendant's legal representatives determined that subpoenas would be necessary in order for the relevant parties to give evidence in court. The defendant's attorney engaged with the relevant potential witnesses until Thursday of last week, being the 29th of May 2025. Given the necessity for subpoenas to be served, the time available for the defendant to serve those subpoenas and give the potential witnesses sufficient time was not sufficient and as a result it is the absence of sufficient time to serve the relevant subpoenas upon the potential witnesses and to give the potential witnesses sufficient time in terms of the subpoenas that is the prejudice suffered by the defendant and the reason for the postponement of the trial being sought by the defendant.
- [7] The plaintiff's counsel duly opposed the application for a postponement and argued that the seven lever arch files were delivered in terms of the time period allowed by the Court order, being the Court order one dated the 5th of May 2025. However, that Court order relates to the defendant's request for further particulars for trial, and not for discovery by the plaintiff. The request by the defendant for further particulars for trial was made initially by the defendant on the 15th of November 2024. The particulars not being forthcoming, an application was brought before the Court and the order granted by the Court in terms of Rules 21 of the Rules of this Court on 5 May 2025.
- [8] Furthermore, counsel for the plaintiff argued that if the defendant's attorney had approached the plaintiff's attorneys after delivery of the seven lever arch files, the plaintiff would have been in a position to avoid the costs of briefing counsel to appear at the trial on 2 June 2025. However, it was only on Thursday, 29 May 2025, that the defendant's attorneys finally realised that it was not going to be possible for the authors of the various file notes and correspondence contained in the seven lever arch files to appear in Court on 2 June 2025 and that subpoenas were going to be necessary. Counsel on behalf of the plaintiff was briefed well before 29 May 2025.

[9] It is evident that a postponement stands to be granted in this matter and that the defendant should not have to be prejudiced by running the trial in the matter albeit the special pleas, without the necessary evidence relevant to its case and necessary for the defendant to achieve potentially success in respect of its case.

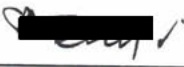
[10] As to the costs of the postponement, being the wasted costs caused by the postponement, it is evident to me from the chronology placed before me that the plaintiff has failed to apply itself adequately to the requirements of the Rules and to the various Court orders in respect of this matter and the chronology bears out that the delay by the plaintiff in various respects, too many to articulate in this judgment, is ultimately the cause for the defendant having to apply now for a postponement of the matter.

[11] In my view, the defendant is entitled to its costs to be paid by the plaintiff and I intend to grant such an order.

[12] In the circumstances, the following order will issue:

1. The trial under case number 14103/2020 is postponed.
2. The wasted costs of the postponement, including the costs of counsel, are to be paid by the plaintiff on scale B.

I hand down the judgment.



CRUTCHFIELD J
JUDGE OF THE HIGH COURT
JOHANNESBURG

For the Plaintiff:

Adv Chowan instructed by Larry Marks
Attorneys.

For the Defendants:

Adv M Patel instructed by Eversheds
Sutherland (SA) INC.

Date of hearing:

2 June 2025.

Date of Judgment:

2 June 2025.