

**IN THE HIGH COURT OF SOUTH AFRICA
EASTERN CAPE LOCAL DIVISION, PORT ELIZABETH**

**Date heard: 19/2/15
Date delivered: 19/2/15
Not reportable**

Case No. 2710/14

In the matter between:

Mark Scheepers

Applicant

and

Nomthandazo Florence Msizi

First Respondent

Litha Lenin Msizi

Second Respondent

Watt Energy (RF) (Pty) Ltd

Third Respondent

Case No. 3977/14

In the matter between:

Mark Scheepers

Applicant

and

Cennergi (Pty) Ltd

First Respondent

Tsitsikamma Community Wind Farm (RF) (Pty) Ltd

Second Respondent

Watt Energy (RF) (Pty) Ltd

Third Respondent

JUDGMENT

PLASKET J

[1] Mr Mark Scheepers, the second respondent in case number 2710/14 (the Msizi case) and an applicant to intervene as a respondent in case number 3977/14 (the Cennergi case), has applied for the postponement of both matters, including his application to intervene in the Cennergi case. He has tendered costs.

[2] The principles that apply to applications for postponements are well-known. They are summarised as follows in *Persadh & another v General Motors South Africa (Pty) Ltd* 2006 (1) SA 455 (SE) para13:

‘The following principles apply when a party seeks a postponement. First, as that party seeks an indulgence he or she must show good cause for the interference with his or her opponent’s procedural right to proceed and with the general interest of justice in having the matter finalised; secondly, the court is entrusted with a discretion as to whether to grant or refuse the indulgence; thirdly, 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 a party should have further time for presenting his or her case; fourthly, the prejudice that the parties may or may not suffer must be considered; and, fifthly, the usual rule is that the party who is responsible for the postponement must pay the wasted costs.’

[3] Scheepers has brought a formal application for a postponement. In it, he has explained in detail how it came about that, on 10 February 2015, his attorneys at the time withdrew, leaving him without legal representation little over a week before the Msizi and Cennergi cases were to be heard (on 19 February 2015).

[4] Although he instructed new attorneys on 12 February 2015, they were not able to obtain a copy of the papers in the Msizi case until the following day when the attorney for the applicants in that case provided them with a full set of indexed and

paginated papers. Scheepers still did not, at the time of deposing to his affidavit on 18 February 2015, have a copy of the papers in the Cennergi case.

[5] Scheepers consulted with his new attorneys for the first time on 12 February 2015, with junior counsel on the following day and with senior counsel on 16 February 2015.

[6] The matters are relatively complex both in terms of the facts and the law. The papers in both are lengthy. The papers in the Msizi case run to 1224 pages, in the Cennergi case to 695 pages and in the intervention application to 546 pages. When heads of argument and other loose documents are added, the papers in both matters total more than 2500 pages.

[7] Certain criticisms have been levelled at Scheepers in the papers and in the heads of argument. Whatever the merits of those criticisms may be, he most certainly cannot be criticised for being dilatory when it comes to mounting his defence to the applications for the winding up of Watt Energy, or for trying to avoid his day in court.

[8] He has, furthermore, given a full explanation as to why he is unable to proceed and I am satisfied that the application for a postponement is not a delaying tactic. I am also satisfied that, given the size and complexity of the matters and their importance for the parties concerned, including Scheepers, the interests of justice demand that he be given time so that his new legal representatives are able to prepare adequately. I am accordingly satisfied that good cause for the postponement has been established.

[9] I have considered too the prejudice that may be caused by a postponement to the applicants in the main applications. In my view, any prejudice they may suffer as a result of a delay in the finalisation of their applications is outweighed by the procedural unfairness that Scheepers will suffer – and the consequent taint on the fairness of the proceedings in both cases – if the application for the postponement was refused. As I have stated, Scheepers has tendered costs and that goes some way at least to mitigate the prejudice to the applicants in the main applications.

[10] In order to minimise the prejudice to the Msizis and Cennergie I am of the view that as short a postponement as possible is necessary. I intend postponing the matter to the last day of the week in which I am on motion court duty in Grahamstown, namely 13 March 2015. I shall also order the transfer of the matter to the Grahamstown, the seat of the division. I record that this is done by consent.

[11] I make the following order:

- (a) Case numbers 2710/14 and 3977/14, including all interlocutory applications therein, are postponed to Friday 13 March 2015.
- (b) The matter is transferred to the Eastern Cape High Court, Grahamstown.
- (c) The applicant is directed to pay the respondents' costs occasioned by the postponement.

C Plasket

Judge of the High Court

APPEARANCES:

For Scheepers: P Scott SC and K Williams instructed by Lawrence Masiza Vorster Inc

For Msizi and Msizi: HC Bothma instructed by Goldberg De Villiers Inc

For Cennergi and Tsitsikamma Community Wind Farm: P Stais SC instructed by Pagdens

For the Taskinens: R Buchanan SC instructed by Brown Braude Vlok Inc