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|------------------------------------|-----------------|
| Reportable:                        | YES / <u>NO</u> |
| Circulate to Judges:               | YES / <u>NO</u> |
| Circulate to Magistrates:          | YES / <u>NO</u> |
| Circulate to Regional Magistrates: | YES / <u>NO</u> |



  24/3/2025

**IN THE HIGH COURT OF SOUTH AFRICA  
(NORTH WEST DIVISION, MAHIKENG)**

**Case No: UM173/2022**

In the matter between:

**DITSOBOTLA LOCAL MUNICIPALITY**

Applicant

and

**KAWO CONSTRUCTION (PTY) LTD**

1<sup>st</sup> Respondent

**ACTING SHERIFF OF THE HIGH COURT-LICHTENBURG**

2<sup>nd</sup> Respondent

***In re:***

***KAWO CONSTRUCTION (PTY) LTD***

Applicant

and

**DITSOBOTLA LOCAL MUNICIPALITY**

1<sup>st</sup> Respondent

**MUNICIPAL MANAGER (DITSOBOTLA MUNICIPALITY)**

2<sup>nd</sup> Respondent

**ABSA BANK LIMITED**

3<sup>rd</sup> Respondent

**Coram:** Titus AJ

**Heard:** 20 March 2025

**Delivered:** 24 March 2025

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**ORDER**

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**It is ordered that:**

- (i) Part B (Rescission Application) of the application is hereby postponed to this Court's opposed motion roll on 21 August 2025.
- (ii) The applicant shall pay the costs associated with the postponement on 20 March 2025 on the attorney and scale (taxable immediately).
- (iii) A copy of this order and the reasons for it shall be send by the Registrar of this Court to the Legal Practice Council, North West Province, for it to investigate the conduct of Morathi & Mataka Attorneys, E P Centre, 1<sup>st</sup> Floor, No 55, Cnr Nelson Mandela Drive and & Walter Sisulu Avenue, Potchefstroom in relation to their withdrawal from this matter.

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**REASONS FOR JUDGMENT / ORDER**

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**TITUS AJ**

**Introduction**

[1] This is an application for the postponement of opposed motion proceedings. The application is brought by the first respondent in the main application. The main application is an application by the first respondent (Kawo Construction (Pty) Ltd) to anticipate the return day of a rule *nisi* and to set aside the order of this Court of 29 May 2023. The parties have agreed to a draft order postponing the proceedings.

[2] The unexpected postponement is caused by the applicant's erstwhile attorneys, Morathi & Mataka Attorneys of Potchefstroom ('Morathi & Motaka'), withdrawing from the matter for alleged non-payment of their fees, days before the hearing. The following appears from the papers.

[3] On Sunday 9 March 2025, Mr Raphepheng Mataka wrote to his client drawing its attention to the date of the hearing and to complain as well as to inform it that:

" 2. (b)esides many promises to do so since 2023, the Ditsobotla Local Municipality has not paid ALL our outstanding invoices for us to execute other pending matters we have been appointed for. Further, that we are aware that other attorneys have been paid in 2025 besides them being appointed only in 2025 by the Ditsobotla Local Municipality.

3. Accordingly, we are unable to continue to represent the Ditsobotla Local Municipality until ALL our outstanding invoices are paid..." (*sic*)

[4] The matter was set down for hearing on 20 March 2025. The applicant obtained new legal representation only a day before the hearing. Inevitably, given the voluminous record, the applicant's new legal representatives required more time to

take proper instructions and prepare. They then also requested as such. The late withdrawal from the matter by Morathi & Motaka left the applicant, as expected, unprepared on the hearing date and caused the inevitable postponement of proceedings, and their erstwhile client the burden of wasted costs.

[5] This Court notes in passing that Morathi & Mataka have not troubled themselves to formally withdraw from the matter either. Be that as it may for now, legal practitioners owe their clients and the courts a professional duty. This much is trite<sup>1</sup>. The attorney, Mr Raphepheng Mataka, should also be alive to the fact that his conduct *qua* attorney is subject to a professional code of conduct<sup>2</sup>. Amongst other things, the code directs legal practitioners, such as Mr Mataka, to maintain the highest standards of honesty and integrity and to treat the interests of their clients as paramount subject, of course, to their duty to the court and the interests of justice; among other things.

[6] Fundamentally, Morathi & Motaka elected to withhold their services for non-payment of their fees until only a few days before the hearing date. Their election to withdraw their services from their client so late in the day appears grossly unreasonable. If Mr Motaka's quoted email is anything to go by, the issue of payment of their fees is nothing new. It stems from as far back as 2023. Notwithstanding his apparent discomfort about his client's failure to pay his fees, Mr Motaka had no apparent difficulty acting for his client when the matter was postponed some months ago to 20 March 2025 for hearing.

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<sup>1</sup> See *Sayed NO v Road Accident Fund* 2021 (3) SA 538 (GP) at para 9).

<sup>2</sup> See Section 97(1)(b) of the Legal Practice Act 28 of 2014



[7] Mr Motaka's duty to this Court, and his client for that matter, required him to make timeous arrangements for payment of his fees and, if unsuccessful, to make timeous arrangements with his client for a successor. This he did not in breach of his code of conduct and to the prejudice of his client and the other litigating party.

[8] Mr Motaka's failure to take timeous steps to resolve his financial issues with his client does not only cause inconvenience to all but it is also discourteous to this Court. This Court has set aside resources, and arranged its roll, to determine this matter. The net effect of the unexpected postponement, particularly for the reasons cited herein, is an inefficient use of this Court's limited resources and an unnecessary delay in the determination of this matter. This Court deprecates the attorney's conduct.

### **Order**

[9] For all these reasons, I order as follows:

- (i) Part B (Rescission Application) of the application is hereby postponed to this Court's opposed motion roll on 21 August 2025.
- (ii) The applicant shall pay the costs associated with the postponement on 20 March 2025 on the attorney and scale (taxable immediately).
- (iii) A copy of this judgment shall be sent by the Registrar of this Court to the Legal Practice Council, North West Province, for it to investigate the conduct of Morathi & Mataka Attorneys, E P Centre, 1<sup>st</sup> Floor, No 55, Corner Nelson Mandela Drive and & Walter Sisulu Avenue, Potchefstroom in relation to their withdrawal from this matter.



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ACTING JUDGE OF THE HIGH COURT  
NORTH WEST DIVISION, MAHIKENG