IN THE COMPANIES TRIBUNAL OF SOUTH AFRICA, PRETORIA

Case no: CT013Mar2016

In the matter between

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| Ithungelw' Ebandla Investment Holdings | Applicant |
| And | |
| Piotrans Board of Directors | First Respondent |
| Molegwailane Kenneth Mohlala | Second Respondent |
| Cynthia Patracia Moji | Third Respondent |
| Louis Javier Cajiao | Fourth Respondent |

Coram: Kganyago M.F

Decision handed down on the 26th October 2016

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## POSTPONEMENT RULING

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[1] This is an application for postponement been brought by the applicant in this matter. The respondents are not opposing the applicant's application for postponement. What the respondents are arguing about, is that the applicant should be ordered to pay their wasted costs on attorney and client scale.

[2] When I refer to the respondents, I am referring to the four respondents whom the applicant has cited and not those respondents who have not properly intervened, but has merely filed their affidavits.

[3] The awarding of costs is in the discretion of the Member of the Tribunal, which discretion should be exercised judiciously having regard to what is fair for both parties.

[4] In the case of Giulana v Diesel Pump Injector Services (Pty) Ltd 1966 (3) SA 451 (R) at page 453 B-E the court said the following:

*" The language used by Lord Justice Bowen in the case of Foster v Farquhar, (1893) 1 Q.B.D.564 at p.568, appears to me to reflect the law with regard to costs which is appropriate to this case:*

The measure of what is fair as to costs is not to be found in a mere consideration of his conduct towards the opposite side. It may have been reasonable from his point of view to do that which it would be unreasonable to make the opposite litigant pay for. Although he has won the action, he may have succeeded only upon a portion of his claim under circumstances which make it more reasonable that he should bear the expenses of litigating the remainder than that it should fall on his opponent. The point is not merely whether the litigant has been oppressive in the way he waged his suit or prosecuted his defence, but whether it would be just to make the other side pay. We can get no nearer to a perfect test than the inquiry whether it would be more fair as between the parties that some exception should be made in the special instance to the rule that costs should follow upon success…' I cannot entertain a doubt', says Lord Halsbury, LC, that everything which increases the litigation and the costs, and which places on the defendant a burden which he ought not to bear in the course of that litigation, is perfectly good cause for depriving the plaintiff of costs.' The language of Lord Watson is to the same effect: I shall not attempt' he says, 'a complete definition of what is meant by these words. They at all events embrace in my opinion everything for which the party is responsible connected with the institution or conduct of the suit and calculated to occasion unnecessary litigation and expense.

*(see Scheepers and Nolte v Pate 1909 TS.353 at p.359, and Kerwin v Jones 1958 (1) SA 400 (SR)"*

[5] The applicant is the one who is seeking indulgence, but it is blaming its present attorneys of record for the mishap which it found itself in. Its attorneys have not been given an opportunity to rebut the allegations levelled against them. In Motswai v Road Accident Fund 2014 (6) SA 360 (SCA) at para 22 the court stated that judges must be astute not to pontificate or to be judgmental about persons who have not been called upon to defend themselves. Therefore, in my view it will be improper of me to blame the applicant's present attorneys for all its mishaps without them been given an opportunity to defend themselves.

[6] From the onset, it was clear that this matter was not yet ripe for hearing. The file is not in order. Supplementary affidavits are just been filed randomly without any indulgence from the Tribunal. The first respondent has raised a point in limine of non joinder, and the applicant in its replying affidavit has conceded to the first respondent's point in limine. In my view, that is the stage on which the applicant should have applied for postponement in order to follow the correct procedures of remedying the defects which it has conceded to.

[7] For the applicant to come to the hearing and merely start blaming its legal representatives, does not take its matter any further. Even if their legal representatives have attended the hearing, they will have encountered other problems since their legal representatives are conceding in their letter dated 25th October 2016 sent to the respondents that they did not furnish the respondents with various documents. That in itself is a concesion that the matter is not yet ripe for hearing. That in my view, should have been taken care of long before the date of hearing, and not just haul the respondents to appear whilst the applicant is well aware that the matter is not ripe for hearing.

[8] I symphathise with the applicant, but that cannot be a ground to absolve them. In fact, they are the creator of their own demise. They should have realised when they conceded to the first respondent's point in limine that this matter is not ripe for hearing. The respondents had to incur unnecessary costs of attending the hearing.

[9] In the result I make the following order:

9.1. The matter by agreement is postponed sine die.

9.2. The applicant is to pay the four respondents' costs on attorney and client scale which costs will include the employment of one counsel for the respondents that have engaged the services of a counsel.

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**M.F KGANYAGO**

**MEMBER OF THE COMPANIES TRIBUNAL**