REPUBLIC OF SOUTH AFRICA

IN THE TAX COURT OF SOUTH AFRICA
(HELD AT JOHANNESBURG)

Case number: **IT 46503**

(1)	REPORTABLE: ~~YES~~ / **NO**
(2)	OF INTEREST TO OTHER JUDGES: ~~YES~~ / **NO**
(3)	REVISED.

1 June 2026
DATE

SIGNATURE

In the matter between:

MNO **APPELLANT**

and

THE COMMISSIONER FOR THE SOUTH AFRICAN REVENUE SERVICE **RESPONDENT**

JUDGMENT EX *TEMPORE*

WILSON J:

[1] This appeal against four income tax assessments raised against the appellant, MNO, was set down before me and two assessors today. It was intended to run for 4 days. Yesterday, on Sunday 31 May 2026, I was informed that the respondent, the Commissioner, considered that the matter could not proceed because MNO had discovered a large quantity of material very late, on 30 May 2026.

[2] The Commissioner says that this additional material will have to be placed before its expert, who will have to take a view on that material in order to be of assistance to the court. That cannot be done in the day or two over the weekend that the expert has been given to assess the material.

[3] MNO's representatives accept that the matter must be postponed *sine die*. The only issue before me is what costs order should result from the postponement. MNO accepts the wasted costs for the postponement must be paid and that MNO must pay them. The question is the extent of the wasted costs that should be allowed.

[4] Mr. A, appearing for the Commissioner together with Ms. M, handed up a draft order which included the costs of two counsel on scale C for each of the four days allocated for the hearing. It also provided for the reasonable taxable costs incurred in obtaining the expert report and the expert's reasonable taxable costs for preparing and reserving his time for the trial set to run this week. Mr. A accepted that it is premature to claim the reasonable taxable costs incurred in obtaining the expert report, since those costs have not yet been fully incurred. He will not know what they are until the trial runs. They may well include every hour spent up until now by the expert and they may well include the full costs of the report in its present form. However, I cannot know that and it is in the interests of all involved that the extent to which the costs of the report itself will be recoverable is decided by the court that ultimately hears the appeal.

[5] That leaves the expert's reasonable taxable reservation and preparation fees, and the costs of both counsel briefed for the Commissioner for all four days of the trial. I did not understand counsel for MNO ultimately to resist an order for the expert's preparation and reservation fees, and I accept that such fees should be recoverable as wasted costs.

[6] The only issue remaining is whether counsel are entitled to their fees for all four days of trial. Counsel for MNO accepted that it is within my power to order that MNO pay the Commissioner's counsels' costs not only for today but for the three other days that were reserved by them for appearance in this trial. I was asked only to amend the order to allow the Taxing Master to consider whether it was reasonable under the circumstances for the costs of the counsels' appearances for the last three days of trial to be claimed under the terms of any reservation agreement counsel may have with the Commissioner's instructing attorneys.

[7] Mr. A assured me that a reservation agreement between him and his junior and his instructing attorneys exists. I need no more than his assurance on this point, and I accept it. That means that if I order a postponement today, Mr. A and his junior will in terms of that agreement charge not only for today but for the three days of the trial that do not run. That cost will no doubt be passed on to the Commissioner himself.

[8] It seems to me that the only question in these circumstances is whether I think that the Commissioner should be fully indemnified for those costs. I think that he should be so indemnified. The lateness and the quantity of discovery, the preparation and other work wasted as a result, and the last-minute nature of MNO's ultimate agreement to a postponement ought in my view to have ordinarily attracted a costs order on the attorney and client scale. This sort of conduct gives the legal process a bad reputation.

[9] The disclosure of the additional material discovered just a day or two ago ought to have taken place weeks or months if not years ago. Given what I regard to be the unacceptable lateness of the discovery it seems to me that there is no basis in fairness or common sense why I should not allow the Commissioner to recover the full amount that the Commissioner will be required to pay to their attorney arising from the costs of ensuring that the abortive trial was properly covered by counsel. Whether or not MNO's conduct is worthy of censure, and I make no finding in that regard, that conduct has certainly caused the loss that the Commissioner seeks to recover by claiming the costs of junior and senior counsel on scale C for all four days of the trial.

[10] For all these reasons:

1. The matter, set down for 1, 2, 3 and 4 June 2026, is postponed *sine die.*

2. The appellant shall pay the costs occasioned by the postponement, such costs to include:

   2.1 The costs of two counsel (senior and junior counsel) for 1, 2, 3 and

4 June 2026 on Scale C;

2.2 The reasonable taxable preparation and reservation fees of the expert, Mr V.

SDJ WILSON

JUDGE OF THE HIGH COURT

Date of Hearing	:	01 June 2026
Date of Judgment	:	01 June 2026