

REPUBLIC OF SOUTH AFRICA
IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

CASE NO: 79368/2018

(1) REPORTABLE: YES/NO

(2) OF INTEREST TO OTHER JUDGES: NO

(3) REVISED: NO

Date: 2 May 2023

E van der Schyff

In the matter between:

ROAD ACCIDENT FUND

APPLICANT

and

WELDERMARIAM HEBORO DELKORO

1ST RESPONDENT

THE SHERIFF, PRETORIA EAST

2ND RESPONDENT

JUDGMENT

Van der Schyff J

- [1] The applicant approached the court on the basis of extreme urgency seeking an order staying the execution of an order granted on 20 May 2021. The applicant, however, withdrew the application at the twenty-fourth hour. The only aspect that remains in dispute is the issue of costs, and more specifically whether the applicant should pay costs on a party-and-party scale or an attorney-and-client scale, and whether the costs must include the costs of two counsel.
- [2] Generally, a presiding judge in the urgent court will not entertain argument on costs only, and the issue of costs would be postponed to the normal motion court. *In casu*, however, I am of the view that it is not necessary to burden an already

overburdened motion court roll with a costs argument, since I have already read the papers. The applicant failed to upload the notice of withdrawal, which was delivered to the respondents on 21 April 2023, to the Caselines' file, and as a result, I was not aware that the papers need not be read. The first respondent's attorney of record uploaded the notice and posted a widely shared note after 12h00 on the 23rd of April, but by that time, I had read the papers.

- [3] The applicant did not obtain the consent of the respondents as required in terms of Rule 41 before withdrawing the application. The first respondent accepted the withdrawal but not the tendered costs. Counsel referred the court to the principle reiterated in *Reuben Rosenblum Family Investments (Pty) Ltd and Another v Marsubar (Pty) Ltd (Forward Enterprises (Pty) Ltd and others Intervening)*:¹

‘It is only in exceptional circumstances that a party that has been put to the expense of opposing withdrawn proceedings will not be entitled to all the costs caused thereby.’

- [4] In addition, the court's preparation time was disrespected. It is trite that a court may grant a punitive costs order to show its disdain for a party's conduct.
- [5] Counsel for the applicant submitted that the complexity of the application did not necessitate the input of two counsel. I agree, however, with the first respondents' counsel that the extreme urgency with which opposing papers had to be prepared, and the nature of the allegations made in the founding papers, not only regarding the first respondent but also his legal team, justify the services of two counsel.

ORDER

In the result, the following order is granted:

- 1. The applicant is to pay the costs of the application on the scale as between attorney and client, inclusive of the costs of two counsel.**

¹ 2003 (3) SA 547 (C) at 550B-C.

E van der Schyff
Judge of the High Court

Delivered: This judgement is handed down electronically by uploading it to the electronic file of this matter on CaseLines. As a courtesy gesture, it will be emailed to the parties/their legal representatives.

For the applicant:	Adv. P. T. Zuma
Instructed by:	The State Attorney, Pretoria
For the first respondent:	Adv. B.P. Geach SC
With:	Adv. F.H.H. Kehrhahn
Instructed by:	Roets & Van Rensburg Inc.
Date of the hearing:	24 April 2023
Date of judgment:	2 May 2023