

**IN THE HIGH COURT OF SOUTH AFRICA
KWAZULU-NATAL LOCAL DIVISION, DURBAN**

CASE NO 4724/2014

In the matter between:

MISIER CLOTHING WORKER PRIMARY

CO-OPERATIVE LIMITED

First Applicant

SALT LAKE CLOTHING CC

Second Applicant

and

LEANDREN PILLAY

First Respondent

LESLEY CHRISTY

Second Respondent

KUMARI GOVENDER

Third Respondent

DONATI CLOTHING

Fourth Respondent

JUDGMENT

NTSHANGASE J

[1] In this matter the applicants sought an order interdicting and restraining the respondents 'from inciting, procuring or encouraging any employee/member of the first applicant to become employed by, either directly or indirectly, the business of the fourth respondent or any other concern whatsoever, which carries on the same business as the applicant.' Other interdictory relief relates to the restraint of disclosure or the divulging of the trade secrets or confidential information of the applicants and the 'approaching, advising or contracting with, whether directly or indirectly, any client or supplier of the applicants or

soliciting the custom of any clients of the applicants.’ The applicants advise that settlement has been reached with the fourth respondent; consequently no relief is now sought against the fourth respondent.

[2] In this application the applicants rely on a ‘confidentiality agreement’ between the first applicant and the first respondent who signed it on 19 December 2011. The applicants allege that the first respondent has breached the terms of the agreement by targeting and luring away employees of the first applicant and customers of the second applicant in an attempt to take business away from the applicants. The respondents deny this.

[3] When the matter served before me to be argued, counsel for the applicants sought to withdraw the relief claimed in its application stating that the need to pursue the claim had fallen away. He then sought an order directing the respondents to pay the costs. This was opposed by the respondents.

[4] In support of the applicant’s claim for costs Mr Combrinck for the applicant urged as did Mr Zietsman for the applicant in *Germishuys v Douglas Besproeiingsraad* 1973(3) SA 299 (NC) that the merits be taken into consideration for purposes of determining liability for payment of costs. Mr Zietsman’s submission in *Germishuys* reflects at page 32 paras D–E in the following passage:

‘Die vraag is egter wie die koste moet betaal, en om hierdie vraag te beantwoord, aldus Mnr Zietsman se verdere betoog, word in ‘n geval soos die onderhawige, gewoonlik op die meriete ingegaan om te sien wie die saak sou gewen het, indien dit voortgesit sou gewees het ...’

The court did not agree. At page 303 para 4 the court’s response is as follows:

‘Mnr Zietsman se hele betoog dat daar na die meriete gekyk moet word om te sien of applikant op ‘n sekere kostebevel geregtig is, al dan nie, gaan vir my in die onderhawige geval nie op nie.’

The court draws the following distinction:

‘Daar is na my mening ‘n kernverskil tussen die posisie van ‘n applikant wat sy saak skik op die meriete en dan vir die Hof om uitsluitel oor koste vra en die posisie van ‘n applikant wat sy eise terugtrek en dan probeer om ‘n kostebevel teen hom af te weer.’

As is stated in the headnote of *Germishuys*,

‘(w)aar ‘n litigant ‘n aksie terugtrek of in effek terugtrek moet daar baie gegronde redes bestaan waarom ‘n verweerder of ‘n respondent nie geregtig sal wees op sy koste nie.’

[5] I agree. There are, in the present matter no cogent reasons for denying the respondents their costs and for awarding costs to the applicant, a litigant who withdrew or in effect withdrew its claim for the relief prayed in its application.

[6] I accordingly make the following order:

1. The applicant is granted leave to withdraw its claim for relief as prayed in its application.
2. The applicant is ordered to pay the respondents’ costs.

DATE OF HEARING:	17 February 2015
DATE OF JUDGMENT:	16 March 2015
FOR THE APPELLANTS:	Adv P J Combrinck, instructed by Shepstone & Wylie Attorneys
FOR THE RESPONDENT:	Adv T Chetty, instructed by Dawood & Associates for First and Third respondent's