

Reportable:	YES / NO
Circulate to Judges:	YES / NO
Circulate to Regional Magistrates	YES / NO
Circulate to Magistrates:	YES / NO

**IN THE HIGH COURT OF SOUTH AFRICA
(Northern Cape High Court, Kimberley)**

Case number: **679 / 2013**
Date heard: **17 / 05 / 2013**
Date delivered: **30 / 05 / 2013**

In the matter between:

EUCLID BRANDON STEELE

Applicant

and

MINISTER OF CORRECTIONAL SERVICE

1st Respondent

**COMMISSIONER OF
CORRECTIONAL SERVICES**

2nd Respondent

DIRECTOR OF CORRECTIONAL SERVICES

3rd Respondent

**CHAIRPERSON OF THE
CASE MANAGEMENT COMMITTEE**

4th Respondent

**CHAIRPERSON OF CORRECTIONAL
SUPERVISION AND PAROLE BOARD**

5th Respondent

Coram: Erasmus, AJ

JUDGMENT

ERASMUS, AJ

- [1] The applicant, an inmate in die Kimberley Correctional Centre, lodged an urgent application 22 April 2013. For purposes of this judgment it is not necessary to deal with the alleged urgency and the relief sought.
- [2] When the application was postponed on 10 May 2013, the Kimberley Justice Centre was instructed to entertain an application for legal aid by the applicant and, if possible, to assist the applicant in this matter.
- [3] The respondents who filed a notice of intention to oppose the application on 22 April 2013 and filed opposing papers on 16 May 2013.
- [4] On 17 May 2013 Mr Mayisela of the Kimberley Justice Centre, as requested by the Court to do, was present in Court and placed on record that the Kimberley Justice Centre will not represent the applicant. He placed on record that he consulted with the applicant on the merits of the application and that the applicant seeks to withdraw the application. As Mr Mayisela did not hold formal instruction to appear on behalf of the applicant in the matter, I enquired from the applicant as to what his intentions were. The applicant confirmed that he sought to withdraw the application.
- [4] Mr Lategan, for the respondents, confirmed that the respondents consented to the withdrawal of the application. The withdrawal of the application was noted. Mr Lategan proceeded by requesting that a cost order be made against the applicant. Mr Mayisela, although not acting for the applicant, indicated that the applicant, being a lay person, should not be burdened with a cost order.

[5] The applicant, at that stage of proceedings, had not filed a notice of withdrawal. There was no tender of costs in court.

[6] Rule 41 of the Uniform Court Rules reads as follows:

"(1) (a) A person instituting any proceedings may at any time before the matter has been set down and thereafter by consent of the parties or leave of the court withdraw such proceedings, in any of which events he shall deliver a notice of withdrawal and may embody in such notice a consent to pay costs; and the taxing master shall tax such costs on the request of the other party...

(c) If no such consent to pay costs is embodied in the notice of withdrawal, the other party may apply to court on notice for an order for costs."

[7] The applicant has not delivered a notice of withdrawal, as is prescribed in Rule 41(1)(a). Until such time as the applicant delivers the notice of withdrawal, irrespective whether he consents to pay costs or not, no cost order can be made. If no consent to pay costs is embodied in the notice of withdrawal, the respondents are entitled to apply to Court, on notice to the applicant, for an order for costs.

[8] Given the fact that the applicant is a lay person and does not have legal representation, I deem it necessary to give further directions in this matter and make the following order:

- 1 **THE APPLICANT IS DIRECTED TO FILE A NOTICE OF WITHDRAWAL WITH THE REGISTRAR AND THE STATE ATTORNEY WITHIN 30 DAYS OF THIS ORDER;**
- 2 **THE REGISTRAR IS ORDERED TO HAVE A COPY OF THIS ORDER DELIVERED TO THE APPLICANT AT THE CORRECTIONAL CENTRE WHERE HE IS CURRENTLY BEING DETAINED.**

**SL ERASMUS
ACTING JUDGE
NORTHERN CAPE DIVISION**

<u>For the Applicant:</u>	In person
<u>For the Respondent:</u>	Mr Lategan
	State Attorney, Kimberley