

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

CASE NO.: 31915/2021

(1) REPORTABLE: NO
(2) OF INTEREST TO OTHER JUDGES: NO
(3) REVISED: NO

Date: 23 July 2025 E van der Schyff

In the matter between

JOHANNA MATHILDE THERESE ENGELBRECHT

Plaintiff/Respondent

and

ATTOOH CONSULTING SERVICES

HOLDINGS (PTY) LTD

First Defendant/Applicant

LOUIS VAN WYK

Second Defendant/Applicant

DISCOVERY LIFE LIMITED

Third Defendant/Applicant

JUDGMENT

Van der Schyff J

Introduction

- [1] The applicants approached the court with an application in terms of Rule 41(1)(c). It is appropriate already at this early stage to indicate that Rule 41(1) provides for the withdrawal of a matter and costs consequent thereto. Rule 41(1)(c) caters for the situation where no consent to pay costs is embodied in the notice of withdrawal. The Rule provides that in these circumstances, the other party may apply to court on notice for an order for costs.

- [2] The applicants in this application are cited in the action instituted under case number 31915/21. The plaintiff in the action is the respondent in this application. The application was heard in the unopposed motion court, and the parties are cited as in the action.

Factual context

- [3] The plaintiff issued a combined summons wherein all three applicants were cited as defendants. The defendants initially raised an exception to the claim on the basis that the plaintiff had not set out a cause of action. Notices of the respective defendants' intention to amend the exception were subsequently filed.

- [4] The plaintiff subsequently filed a notice of intention to amend the particulars of claim. The plaintiff intended to amend the particulars of claim by replacing the entire particulars. It is, among others, stated in the proposed amended particulars of claim that no relief is sought against the second and third defendants, but that they are cited only insofar as they might have an interest in the outcome of the proceedings. The defendants filed a notice of objection to the plaintiff's notice of intention to amend.

Discussion

- [5] On the electronic case record, as it stands, there is no indication that either the exception or the proposed amendment was brought to finality. Since an objection

was raised to the plaintiff's intention to amend the particulars of claim, the plaintiff was obliged in terms of Rule 28(4) to lodge an application for leave to amend. Since no application was launched, it cannot be held that the plaintiff's particulars of claim were indeed amended. The second and third defendants are thus not yet off the hook. It cannot be said that the plaintiff withdrew the action against any of the respondents.

- [6] The defendants take issue with the fact that the plaintiff did not tender costs in the notice of intention to amend the particulars of claim. In approaching the court for an order that the plaintiff is ordered 'to pay the costs that were not tendered in her Notice of Intention to Amend under case number 31915/21' the defendants lost sight of Rule 28(9). Rule 28(9) provides as follows:

'A party giving notice of amendment in terms of subrule (1) shall, unless the court otherwise directs, be liable for the costs thereby occasioned to the other party'

- [7] As far as costs occasioned by the filing of a notice of intention to amend are concerned, the issue is regulated by the Uniform Rules of Court. The applicants in this application do not require a court order to render the respondent liable for the costs occasioned by the notice of amendment in terms of Rule 28(1).
- [8] As a result, the application stands to be dismissed. Since the application was not opposed, there is no need to grant any costs order.

ORDER

In the result, the following order is granted:

1. **The application is dismissed.**



 E van der Schyff
 Judge of the High Court

Delivered: This judgment is handed down electronically by uploading it to the electronic file of this matter on CaseLines. In the event that there is a discrepancy between the date the judgment is signed and the date it is uploaded to CaseLines, the date the judgment is uploaded to CaseLines is deemed to be the date that the judgment is handed down.

For the applicants/defendants:

Adv. R. Kooverjie

Instructed by:

Keith Sutcliffe & Associates Inc.

For the respondent/plaintiff:

No appearance

Date of the hearing:

22 July 2025

Date of judgment:

23 July 2025