



**IN THE LAND COURT OF SOUTH AFRICA
HELD AT RANDBURG**

CASE NO: LCC209/2021B

Before: The Honourable Mabasa AJ

Heard on :2 April 2025

Reserved: 2 April 2025

Delivered on: 11 June 2025

DELETE WHICHEVER IS NOT APPLICABLE

(1) REPORTABLE: ~~YES~~ / NO

(2) OF INTEREST TO OTHER JUDGES: YES / NO

(3) REVISED: ~~YES~~ / NO

11 June 2025
DATE


SIGNATURE

In the matter between:

TEDSTONE FLATS CC AND 10 OTHERS

First to Eleventh Applicants

and

MAPLE VIEW INVESTMENTS (PTY) LTD

First Respondent

**HEAD OF THE GAUTENG PROVINCIAL
OFFICE OF THE DEPARTMENTAL OF RURAL
DEVELOPMENT AND LAND REFORM**

Second Respondent

ORDER

1. The costs relating to Part A of the Applicants' urgent application (that was dealt with in the Court Order handed down by the Honourable Judge Ncube on 16 March 2023) are to be paid by the Third Respondent on the party and party scale, including the costs of two counsel.
 2. The Third Respondent is ordered to pay the costs of this application on the appropriate party and party scale.
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JUDGMENT

MABASA AJ

Introduction

[1] This is an opposed application to "re-open" a case previously decided by this Court for the determination of costs, and to receive and consider additional evidence relating to costs.

[2] The purpose of Part A of the main application was to urgently interdict the relocation of certain occupiers to the Tedstoneville Land until it was legally and physically suitable for occupation. Part B aimed to determine whether the Tedstoneville Land or an alternative site would be more appropriate for relocation, by reviewing the Municipality's decision to relocate the occupiers there. The Applicants succeeded in Part A, with the Court ordering the Municipality to submit additional documents and information to the other parties, enabling Part B of the application to proceed. Costs were reserved pending Part B of the application.

The parties

[3] The parties are as they were in the main application.

Background

[4] In the main application, the Applicants were partly successful in part A of the application, being urgent interdictory proceedings. Judgment was handed down on 16 March 2023 by Judge Ncube in this Court.

[5] The following order was granted by Judge Ncube:

“Order

In the circumstances, I am making the following order:

- 1. The application is hereby granted.*
- 2. Non-compliance with the ordinary rules pertaining to service and filing and timelines for delivery of documents is condoned.*
- 3. The relocation of the Fourth to One Hundred and Twenty Seventh respondents ('the evictees') to Erf 326 Tedstoneville, Germiston, by the third respondent in terms of court order dated 5 March 2020 issued by the Honourable Justice Ncube and the directive dated 23 September 2021 issued in terms of Rule 37 of the Land Claims Court Rules is stayed and the third respondent is interdicted against carrying out the said relocation pending the finalization of the applicants' application to Review the third respondents' decision to relocate the evictees to Erf 326 Tedstoneville, Germiston ('the Tedstoneville Land');*
- 4. The third respondent is ordered to immediately cease with and desist from all works to prepare the Tedstoneville Land for occupation pending the finalisation of the applicants' application to Review the Third Respondents' decision to relocate the evictees to Erf 326 Tedstoneville, Germiston ('the Tedstoneville Land');*
- 5. The Applicants are directed to lodge their review application mentioned in paragraph 3 above within 35 (Thirty-five) calendar days of the date of the granting of these orders failing which the stay granted in terms hereof is lifted;*
- 6. The third respondent is ordered to deliver to the applicants' attorney a comprehensive and complete report detailing the extent of the community*

engagement conducted with all persons in Tedstoneville area within 14 (Fourteen) days of the date of this order;

- 7. The third respondent is ordered to furnish to the applicants' attorney a full report within 14 (Fourteen) days of the date of the grant of this order in which it details its long term plans, including budget, for the housing of the Fourth-One Hundred and Twenty Seventh respondents, in view of the fact that the third respondent has stated on record that the relocation of the evictees to the Tedstoneville Land is only temporary;*
- 8. The third respondent is ordered to file at court and deliver to the applicants' attorney within 14 (Fourteen) days hereof a comprehensive statement detailing the income levels of the Fourth-One Hundred and Twenty Seventh respondents;*
- 9. The third respondent is ordered to file and deliver to the applicants' attorney within 14 (Fourteen) days of the date of this order, comprehensive information relating to the costs per shack to be built and serviced by the third respondent on the Tedstoneville Land, and*
- 10. The costs of this application are reserved for determination at the outcome of the applicants' Review application."*

[6] Before addressing the issue costs, I deal with the following preliminary procedural and legal issues:

Point *in limine*

[7] The Third Respondent ("the Municipality") raises a point *in limine* challenging this Court's jurisdiction to hear the matter regarding costs. It argues that once a court makes a final judgment, it becomes *functus officio*, and it cannot change that judgment unless exceptional legal grounds exist.

[8] The Municipality further argues that this principle applies to the Land Court, just as it does to other Superior Courts. The only possible avenues for amending a final order are as stipulated in Rule 42 of the Uniform Rules of Court for patent errors or omissions attributable to the Court, or limited common law exceptions (e.g., where costs were omitted inadvertently). Rule 42(1)(b)¹ allows variation if there was a patent

¹ 42. Variation and rescission of orders

error or omission attributable to the court, not the parties. There is no claim that the Court misunderstood its own intention or omitted a costs order by mistake. Thus, neither Rule 42 of the Uniform Rules of Court nor common law exceptions apply.

[9] I disagree with the assertion that this Court lacks jurisdiction. The litigation process is incomplete until the costs incurred in litigation are taxed.² The costs order in this matter was considered by the Court after full argument. It was expressly reserved for determination with the review application.

Condonation for Late Filing

[10] The Applicants filed their Replying Affidavit 24 days late, serving it on 8 February 2024. They submit the reasons for the delay include: the festive period court recess (including *dies non*), the deponent was on leave, the unavailability of counsel until mid-January 2024, the volume of the Answering Affidavit (over 330 pages), and the delayed receipt of corrected annexures.

[11] The Applicants argue that no prejudice to the Municipality is shown, and no formal objection or irregular step was taken by them.

[12] I agree that the Applicants have shown good cause and the delay was neither intentional nor reckless, and is therefore condoned.

Authority of the Applicants' deponent

[13] The Municipality raised objections regarding incorrect citation of parties in the Notice of Motion. The Applicants response is that this was a clerical error involving duplication and omission in the heading, not the body of the affidavit. The parties were properly described in the affidavit itself. Under the Land Court Act 6 of 2023 ("the Land Court Act"), specifically section 13, the deponent has standing. Rule 7 (mirroring

(1) The court may, in addition to any other powers it may have, *mero motu* or upon the application of any party affected, rescind or vary—

(b) an order or judgment in which there is an ambiguity, or a patent error or omission, but only to the extent of such ambiguity, error or omission.

² *Bills of Costs (Pty) Ltd v The Registrar of Cape* 1979 (3) SA 925(A) at 941-2.

High Court Rule 7) allows challenges to authority on notice, the Municipality failed to follow this process.³ I accept that the Applicants' deponent was properly authorised.

Mootness of the Review Application

[14] The review (Part B) challenged the Municipality's decision to relocate the occupiers to Tedstoneville. This decision was abandoned by the Municipality, and the occupiers were relocated to Putfontein instead.

[15] The interdict (Part A) was granted pending the review, but since the relocation plan changed, there is now no decision to review. The review has become moot and cannot meet procedural requirements, such as identifying a live administrative decision to be reviewed in accordance with Rule 35(1) of the Rules of this Court.

[16] The Applicants argue that pursuing a now-defunct review would amount to vexatious litigation, contrary to public interest.⁴ The Applicants contend that the Land Court has discretion and powers equivalent to the High Court to manage its own processes, including reopening matters and determining costs.

[17] The Municipality's abandonment of the Tedstoneville relocation rendered the review application moot, and costs can no longer be decided in that context.

[18] Since the review application is now moot, the Applicants argue the only viable route is to re-open the case to address the pending issue of costs. The Applicants argue that reopening the case is the only logical and legally permissible option for adjudicating costs.

[19] In accordance with the principles laid down in *Endumeni*⁵, the Applicants argue the judgment should be interpreted as intending that costs be determined insofar as the review remains viable, which it no longer is.

Application to re-open the case for costs

³ *Unlawful Occupiers of the School Site v City of Johannesburg* [2005] 2 All SA 108 (SCA).

⁴ *JT Publishing (Pty) Ltd and Another v Minister of Safety and Security and Others* 1997 (3) SA 514.

⁵ *Natal Joint Municipal Pension Fund v Endumeni Municipality* 2012 (4) SA 593 (SCA).

[20] The Applicants now seek to re-open the case to resolve the issue who must bear the costs of Part A. They allege that they originally informed the Court of the new facts, but received no directive.

[21] They then formally launched this application in line with advice from the Municipality's own legal representative, who suggested the Applicants to either re-open the matter, or seek a directive from the Court.

[22] The Applicants attack the Municipality's position as inconsistent and contradictory, since it both demanded and then objected to the very process it had suggested.

[23] The Applicants argue that The Land Court Act (sections 3, 14, and 24) and Rule 37 of this Court provide the Land Court with the inherent powers and interlocutory jurisdiction to entertain such an application. Therefore, the Land Court has the jurisdiction to re-open the case to determine costs. The issue remains alive.

Delay in bringing the application

[24] The Municipality argues the Applicants also seek to introduce new evidence, but this is not a proper ground under Rule 42 of the Uniform Rules of Court or the common law. Therefore, the test for allowing new evidence post-judgment is not satisfied.

[25] They aver that the Court made its order on 16 March 2023. The Applicants launched their application only in October 2023, approximately six months later. Under Rule 64(2)(a) of the Rules of this Court, applications for variation or rescission must be brought within 10 days. Therefore, the application was not brought within a reasonable time.

Time line for factual Background

[26] The First Respondent obtained a court order to evict the 4th to 127th Respondents (“the occupiers”) in March 2020. The Municipality was obligated to secure alternative accommodation for the Occupiers.

[27] The Applicants learned that the occupiers were to be relocated to Erf 326 Tedstoneville by 31 December 2021. Local residents opposed the relocation via a petition on 21 May 2021.

[28] On or around 21 December 2021, the Applicants launched an urgent application:

1. Part A: sought an interdict preventing the relocation to Tedstoneville.
2. Part B: a review application challenging the relocation decision itself.

[29] The matter was heard over four days: 23–24 February and 4–6 April 2022. Judgment was delivered on 16 March 2023 by Ncube J, who reserved the issue of costs for later determination by the Review Court in Part B.

[30] Sometime during June 2022, the Municipality decided instead to relocate the Occupiers to Putfontein.

[31] The Applicants only became aware of this change on 22 October 2022.

[32] Since the original decision to relocate to Tedstoneville had been effectively abandoned, there was no longer a decision to review under Part B.

[33] However, the costs issue from Part A (urgent interdict) remained unresolved.

[34] The Applicants formally notified the Municipality’s attorneys, requesting them to inform the Court of the changed facts.

[35] No response was received; thus, the Applicants’ attorneys approached the Court directly for guidance, but received no directive.

[36] The Applicants filed an application to reopen the matter on 11 October 2023.

[37] Both sides submitted answering and replying affidavits, with permission later granted to file supplementary affidavits.

[38] Ncube J issued a directive dated 30 April 2024 that costs should be determined by the Review Court. The matter was set down for 2 April 2025 for a determination on costs.

The issues

[39] Despite the voluminous papers (in excess of 3000 pages on Caselines) and lengthy arguments the issues are simple:

- a. Whether the case can be re-opened for a hearing on costs;
- b. Whether the applicants are entitled to an award for costs.

Discussion

[40] The Municipality's opposition is built on three principal pillars:

1. An assertion that the Land Court is *functus officio* and therefore lacks jurisdiction to reopen its costs order;
2. A claim that the Applicants have failed to meet the strict tests for introducing new evidence; and
3. A contention that "no exceptional circumstances" exist to justify a punitive, attorney-and-client costs order.

[40] In my view, there are multiple flaws, both in logic and in law, in each of these lines of argument.

[41] The first relates to an overly broad invocation of *functus officio*. The Municipality insists that "once a court pronounces a final order, it cannot revisit its decision." But it ignores the fact that this Court (in its March 2023 judgment by Ncube J) deliberately reserved costs for the Review Application, an invitation to return later once the factual matrix changed.

[42] By reserving costs for determination at the outcome of the Review Application, the Court implicitly acknowledged that judgment on costs was not “final” until the Review concluded. The Municipality’s suggestion that the Court somehow “lost jurisdiction” over those reserved costs is thus flatly inconsistent with the Court’s own order.

[43] With regard to Rule 42 of the Uniform Rules of Court, I am of the view that it precisely matches the present facts. The Municipality reads Rule 42 narrowly, limited only to “patent errors” in the written order. In so doing, it ignores the fact that omitting an entire costs adjudication because subsequent events rendered the review moot is exactly the kind of “consequential matter” Rule 42 intended to correct.

[44] It was held in *Firestone SA v Gentiruco*⁶, that a court may supplement an order on accessory matters like costs if new facts arise before final delivery or immediately thereafter. Here, the costs issue was never finalised because the review evaporated. Resorting to Rule 42 to get a proper costs pronouncement, rather than forcing Applicants to relitigate the entire review lies squarely within the rule’s purpose.

[45] The Municipality castigates the Applicants for waiting “six months” after judgment. Yet the Court’s order explicitly contemplated that costs would be determined once the review either succeeded or failed, and that calendar was inherently fluid because the review remained pending.

[46] Criticising the Applicants for not moving within 10 days under Rule 64(2)(a) misreads that rule: it applies to variation or rescission of a single written order—here, costs were never in a single, self-contained order but were deferred. Once the Review became moot, the only way to fulfil the reserved cost order was to re-open the matter. Labelling that “late” ignores that the Court itself left costs in limbo pending later events.

⁶ *Firestone South Africa (Pty) Ltd v Gentiruco AG* [1977] 4 SA 298 (A).

[47] The Municipality's arguments on 'new evidence' is also flawed. The Municipality contends the Applicants cannot introduce new evidence because they should have brought it before judgment. But the crux of the new evidence is the fact that the Municipality had, as of June 2022, abandoned its plan to relocate occupiers to Tedstoneville. This new evidence was actually already known by the Municipality.

[48] The Applicants only received confirmation in January 2023. Holding them responsible for not anticipating a secret internal decision is absurd, especially when the Municipality's own internal memo, YM-B, was deliberately withheld until January. The Municipality cannot complain that the Applicants "failed to lead the evidence timeously" when it was the Municipality's choice to hide that decision from both the Applicants and the Court.

[49] The Municipality quotes *Porterstraat's*⁷ multi-factor test, but then misapplies it. The test expressly considers whether the evidence "could have been shaped" to fit the party's case, a concern the Court can address by weighing prejudice and credibility.

[50] Here, the Applicants had no motive to "shape" YM-B; it was a document of public interest confirming the Municipality's real-world actions. The Municipality's argument that "YM-B's authenticity is disputed" only underscores that the information was material and should have been placed before the Court by whoever was "in the know", namely, the Municipality itself.

[51] The Municipality suggests that possessing an internal memo without explaining "how it came into the Applicants' possession" should draw judicial suspicion. This argument ignores the fact that the Municipality itself remains silent to this day on why it did not place YM-B before the Court, even after arguments concluded.

[52] A party cannot create a Catch-22: if it hides evidence, it cannot complain that others are "circumspect" when they later disclose it. The real circumvention here is the Municipality's own refusal to share vital information.

⁷ *Porterstraat 69 Eiendomme (Pty) Ltd v PA Venter Worcester (Pty) Ltd* 2000 (4) SA 598 (C).

[53] With regard to the issue of costs the municipality makes an erroneous claim that no exceptional circumstances exist.

[54] In its March 2023 order, the Court said the presence of exceptional circumstances would justify awarding costs against the Municipality. The Municipality now argues "no such circumstances exist," disregarding the fact that it was the Municipality's own reckless silence that created those circumstances, namely, mooting the Review by unilaterally changing the relocation.

[55] A party's own post-hearing conduct can produce "exceptional circumstances" warranting costs. Failing to tell the Court that it had abandoned the relocation until months after argument is precisely the sort of inaction that transcends ordinary litigation mistakes.

[56] The Municipality further contends it acted in "good faith" and was merely fulfilling its constitutional duties. But once it deliberately withheld any notice of the new relocation plan, it no longer acted in good faith before the Court.

[57] It repeatedly asserts it had "no duty" to notify Applicants of its changed plan, yet simultaneously praises its own "duty to comply with a court order" by pointing out it eventually relocated occupiers.

[58] Those cannot both be true. Once the Municipality realised that its own witnesses and documents would confirm the original review basis was gone, it had a clear duty to place that fact in front of the Court, even if it did not want the Applicants to benefit.

[59] The Municipality's core misstep is to equate any duty to the Applicants with a duty to the Court. Its own attachments (e.g., emails telling Applicants to "reopen" or "seek direction") prove that it accepted a procedural obligation, only to renege on it.

[60] A litigant's ethical obligation is not limited to adversarial fairness; it extends to the Court itself. By hiding crucial facts and then pretending it "did nothing wrong," the Municipality reveals that it fundamentally misunderstands, or simply ignores, the duty of openness and full disclosure that a legal practitioner, or a party, owes to the Court.

[61] The issue of the Court's jurisdiction is dealt with in paragraph 7 to 9. In the judgment of Ncube J, the Court already expressly invited a follow-up on costs. That invitation was a clear grant of jurisdiction to revisit the costs when the facts changed. The Municipality cannot now claim "no jurisdiction" to do exactly what the Court asked them to do: put all material facts before the bench so it can finalise costs.

[62] If one treats the costs reservation as a "jurisdictionally closed" issue, then the Court would never have reserved costs in the first place. The only logical inference is that the Court intended to preserve its power to hear a future costs application once the review either proceeded or was rendered moot.

[63] The Municipality relies heavily on *Firestone SA*⁸ and *West Rand Estates*⁹ to insist no post-judgment supplementation can occur. However, both authorities explicitly permit supplementation where accessory matters, like costs, were deferred or inadvertently omitted.

[64] In *Firestone*, the court recognised that if costs were argued but not finalized, or if "no order" was made due to a procedural hiatus, the court may supplement that order once the issue crystallizes. That is exactly what happened when the review plan changed.

[65] In the judgment of Ncube J, the Court acknowledged (at paragraph 23) that neither party showed "exceptional circumstances" at that juncture. It deliberately reserved costs to allow for a later determination. The Municipality cannot now say "the Court had no intention to revisit" when that is precisely what the Court itself told the parties it would do.

[66] The Municipality's entire timeline argument rests on the notion that the Applicants somehow delayed. But in truth, the Municipality was the sole gatekeeper of the internal decision to relocate the occupiers to Putfontein. To blame the Applicants for "delay" in

⁸ *Firestone* supra n 6.

⁹ *West Rand Estates Ltd v New Zealand Insurance Co Ltd* 1926 AD 173.

bringing forward that information is illogical when the Municipality deliberately withheld that very fact.

[67] The Municipality further argues that, because this is public-interest litigation, no costs order should be made. I disagree. Public-interest considerations actually lend weight to awarding costs when a public respondent, like a municipality, acts to conceal facts: a costs order in such a scenario is precisely the “exceptional circumstance” aimed at preserving integrity in public-interest cases.

[68] The Municipality further claims its Part A opposition was “reasonable” and in “good faith.” But good faith cannot co-exist with deliberate concealment of a decision that directly moots the entire review.

[69] If litigation is “public interest,” then government actors bear an even higher duty to be forthright once they change course.

[70] Also the Municipality repeatedly asserts “it had no duty to inform the Applicants” of its decision, yet simultaneously mocks the Applicants for “making up for the Municipality’s work.” This is a blatant contradiction: if it truly had no duty to the Applicants, why resent their attempts to fill the vacuum?

[71] The only plausible explanation is that the Municipality realized early on that its own silence would cost it the costs battle. Hence, it chose to conceal and then attack the Applicants for their subsequent disclosures.

[72] By first telling Applicants to “reopen” or “seek directions,” then turning around to say “you should not have done that,” the Municipality demonstrates a strategy of obfuscation rather than compliance.

[73] The Legal Practice Council Code and *Hyundai SA v Smit*¹⁰ requires parties to disclose all material facts to the court. The Municipality’s failure on that front was far

¹⁰ *Hyundai Motor Distributors (Pty) Ltd and others v Honourable Mr Justice JMC Smit and others* [2000] 1 All SA 259 (T).

more culpable than any minor procedural misstep by the Applicants.

[74] Attorney-client costs are reserved for cases of fraud, dishonesty, malice, or wilful refusal to comply. By withholding the post-hearing decision to relocate, the Municipality was not merely negligent, its conduct can fairly be described as calculated to avoid costs.

[76] Every delaying tactic, every irrelevant affidavit, and every contradictory statement needlessly expanded the record into thousands of pages. That is a hallmark of conduct that unnecessarily protracted the case, for which the Court must express its displeasure. In doing so I am mindful of the fact that the Municipality conducts its litigation with public funds.

Conclusion

[77] The Municipality's insistence on refusing to acknowledge its own misdeeds, while hiding behind a tortured, over-literal reading of *functus officio* and Rule 42, is fundamentally self-defeating. It ignores the Court's own orders, misreads the law on new evidence, and attempts to cloak deliberate concealment in a veneer of procedural technicalities. For these reasons, its arguments fail both in logic and in law, and the application to reopen and secure a costs order must be granted.

Order

[78] In the circumstance, the following order is made:

1. The costs relating to Part A of the applicants' urgent application (that was dealt with in the Court Order handed down by the Honourable Judge Ncube on 16 March 2023) are to be paid by the Third Respondent on the party and party scale, including the costs of two counsel.
2. The Third Respondent is ordered to pay the costs of this application on the appropriate party and party scale.



D MABASA

Acting Judge

Land Court

APPEARANCES:

For the Applicant: Adv T Paige - Green

Instructed by: HBG Schindlers Attorneys & Notaries

For the Third Respondent: Adv Muhammad Amojee

Instructed by: Ceresse Kruger-Troskie Attorneys Inc