

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG

Case Number: 2023/116075

(1)	REPORTABLE: NO
(2)	OF INTEREST TO OTHER JUDGES: NO
(3)	REVISED: NO
04 Sept 2025	
DATE	SIGNATURE

In the matter between:

PIETER ADRIAAN KOEGELENBERG

Applicant

and

NEW GENERATION RIGGING (PTY) LTD

First Respondent

STEFANUS TOLMAY

Second Respondent

STANLEY NAUDE

Third Respondent

CELE MAI TRADING (PTY) LTD

Fourth Respondent

CALOUZEL TRADING (PTY) LTD

Fifth Respondent

JUDGMENT

READ A.J

Introduction

[1] This matter concerns the determination of an appropriate costs order following the withdrawal of an application by the Applicant, Mr Pieter Adriaan Koegelenberg, against the Respondents. The issue before this Court is whether the Applicant should be ordered to pay the costs of the abortive proceedings, and if so, on what scale, or whether exceptional circumstances warrant a departure from the general rule that costs follow the event.

Factual Matrix

[2] The Applicant launched the original application under case number 116075/2023 on the premise that he was a registered shareholder of the First Respondent, New Generation Rigging (Pty) Ltd. This premise formed the bedrock of his claim for relief under section 163 of the Companies Act, which provides remedies specifically available to shareholders.

[3] Within one week of the application being issued, and before service had been completed on all Respondents, the Respondents' attorneys addressed correspondence to the Applicant's attorneys on 22 November 2023, informing them that the Applicant was not, in fact, a registered shareholder of the First Respondent. The Applicant was invited at this early stage to reconsider the application.

[4] Notwithstanding this indication of a defect in his case, the Applicant's attorneys insisted on 24 November 2023 that the Respondents should file an answering affidavit. Subsequently, an inspection of the share register was conducted on 13 December 2023, which established that the Applicant was not a registered shareholder.

[5] The Applicant eventually withdrew the application and filed a replying affidavit that dealt exclusively with the issue of costs rather than the merits of the underlying dispute. No tender for costs accompanied the withdrawal.

Legal Framework

[6] The legal principles governing the award of costs in South African law are well-established and require consideration of both the general rule and the circumstances that may warrant departure therefrom. The fundamental principle is that the award of costs lies within the judicial discretion of the court, which discretion must be exercised judicially upon consideration of all relevant factors.

[7] The general rule, as consistently applied by our courts, is that costs follow the event, meaning that the unsuccessful party bears the costs of the successful party. However, this rule is subject to the overriding principle that the court retains ultimate discretion to make such order as to costs as would be fair and just between the parties in all the circumstances.

[8] Where an application has been withdrawn, the position of the withdrawing party is analogous to that of an unsuccessful litigant, as the claim or application has proven futile. The authorities establish that sound reasons must exist before a defendant or respondent who has been put to the expense of opposing withdrawn proceedings should be deprived of costs.

Respondents' Arguments

[9] The Respondents contend that the general rule should apply without modification, given that they successfully resisted the application and the Applicant has withdrawn the proceedings. They emphasise that the Applicant was provided with clear and early notice of the fundamental defect in his case but chose to persist nonetheless.

[10] The Respondents further assert that the Applicant's conduct in insisting upon the filing of an answering affidavit, despite being aware of the shortcomings in his application, constituted an abuse of the court's processes. They contend that this was done merely to obtain the Respondents' version on oath, which assertion finds some support in the Applicant's subsequent launching of a fresh application under case number 2024-057296.

[11] Additionally, the Respondents point to allegations of harassment and pressure tactics employed during the investigative phase, which allegations were not denied in the Applicant's replying affidavit. They also raise concerns regarding the Applicant's financial capacity to meet any costs order, suggesting that the failure to tender costs upon withdrawal reflects an inability to pay.

Applicant's Arguments

[12] The Applicant's defence rests upon the argument that exceptional circumstances exist which justify a departure from the general rule. Central to this argument is the contention that the Respondents' conduct induced the bona fide belief that he was indeed a registered shareholder of the First Respondent.

[13] The Applicant points to several factors that, he argues, reasonably led to this belief: the existence of formal agreements styled as "Shareholders Agreement" and "Agreement of Sale of Shares"; his treatment as a shareholder through attendance at purported shareholders' meetings; receipt of what he believed to be dividend payments; and representations by the Second Respondent that both he and the Applicant were shareholders of the First Respondent.

[14] The Applicant further contends that the Respondents have failed to provide any adequate explanation for why the formal agreements were not implemented and why he was not registered as a shareholder despite the contractual provisions that appeared to require such registration. This silence, he argues, supports the inference that the Respondents were complicit in creating the confusion that led to the abortive application.

Assessment

[15] Having considered the totality of the evidence and the arguments advanced by both parties, this Court must determine whether the circumstances of this case justify a departure from the well-established general rule that costs follow the event, particularly in the context of withdrawn proceedings.

[16] While the Court acknowledges that the Applicant may have held a genuine belief that he was a shareholder based on certain documentary and circumstantial

evidence, this belief, however genuinely held, was ultimately incorrect. The law places the risk of launching proceedings upon the party who institutes such proceedings, and good faith alone does not absolve a litigant from the consequences of an unsuccessful action.

[17] The fact that the Respondents provided early and clear notice of the fundamental defect in the Applicant's case significantly undermines any argument that the subsequent costs were unavoidably incurred. The Applicant was afforded a reasonable opportunity to reconsider his position but chose instead to persist with proceedings that were doomed to failure.

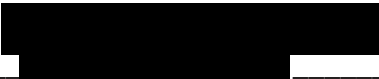
[18] The Applicant's insistence upon the filing of an answering affidavit after being notified of the absence of registered shareholding suggests that the continuation of the proceedings was motivated not by a reasonable prospect of success but rather by a desire to obtain information through the litigation process, which would constitute an improper use of the court's procedures.

[19] The subsequent launching of fresh proceedings under case number 2024-057296, which appears to traverse much the same factual territory but on a different legal basis, tends to support the inference that the Applicant was aware that his original application was fundamentally flawed yet chose to persist with it nonetheless.

[20] While the Court has considered the Applicant's argument regarding the Respondents' alleged failure to explain the non-implementation of the agreements, this factor alone cannot justify the departure from established principle that would be required to absolve the Applicant of liability for costs. The burden remained upon the Applicant to establish his *locus standi* before instituting proceedings, regardless of any perceived shortcomings in the Respondents' explanations.

Order

1. The Applicant is ordered to pay the Respondents' costs of the application on a party and party basis and on scale C.


C. READ

ACTING JUDGE OF THE HIGH COURT
GAUTENG DIVISION, JOHANNESBURG

Heard on: 10 June 2025

Delivered on: 04 September 2025

For the Applicant: Adv. G. Kairinos SC

Instructed by: Jurgens Bekker Attorneys

For the Respondent: Adv. D T R v Duplessis SC

Instructed by: HJ Van Rensburg Inc.