

REPUBLIC OF SOUTH AFRICA



**THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA**

DELETE WHICHEVER IS NOT APPLICABLE:

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

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

(3) REVISED:

DATE: 01/09/2025 SIGNATURE:

A black rectangular box redacting the signature of the judge.

CASE NR: 2024-956869

In the matter between:

INTEGRITY FORENSIC SOLUTIONS CC

APPLICANT

and

THE MINISTER OF WATER AND SANITATION

FIRST RESPONDENT

THE UMNGENI UTHUKELA WATER BOARD

SECOND RESPONDENT

Delivered: This judgment was prepared and authored by the Acting Judge whose name is reflected and is handed down electronically by circulation to the Parties / their legal

JUDGMENT

MARUMOAGAE AJ

1. The Applicant brought an application to compel the First Respondent to decide whether to investigate the Second Respondent's accounting authority in terms of the relevant provisions of the Public Finance Management Act.¹ The Applicant further sought an order that, should the First Respondent decline to investigate the Second Respondent's accounting authority, the First Respondent must communicate her reasons to the Applicant. This Application was brought in May 2024.
2. On 13 June 2024, through the office of the State Attorney, the First Respondent wrote a letter to the Applicant indicating that she will investigate the allegations made by the Applicant against the Second Respondent's accounting authority. On 1 August 2024, the First Respondent personally wrote a letter to the Applicant, advising that the issue raised by the Applicant is being investigated and that she will consider the matter after the completion of the investigation. The First Respondent opposed this Applicant and filed its answering papers in September 2024.
3. Since the First Respondent advised the Applicant that she decided to investigate the allegations made by the Applicant, the matter has become moot, and there is no need to consider the merits of the application. However, the Applicant argues that it is entitled to be awarded costs of this application because the First Respondent decided to investigate only after this application had been instituted. The First Respondent is of the view that it should not be ordered to pay the Applicant's costs. The issue is whether the First Respondent should be ordered to pay the Applicant's costs of this application.

¹ 1 of 1999.

4. The Applicant also brought an application for leave to deliver the letter of appointment of Nexis Forensic Services (Pty). It was argued on behalf of the Applicant during the oral hearing that the purpose of this letter is to provide the court with the chronology of events. The First Respondent did not oppose the filing of this letter.
5. The reason the parties agree that it is unnecessary to determine the merits of this application is not because the Applicant withdrew the application. Had the Applicant withdrawn the application, costs would have been granted against it. This is what transpired in *Serwada v Minister of Home Affairs for RSA*,² where the Applicant brought an urgent application seeking an order declaring the seizure of his passport and a temporary residence permit to be unlawful. However, before the matter could be heard, the Minister of Home Affairs returned the Applicant's passport and a temporary residence permit to him leading to the Applicant to withdraw the application.
6. The court in *Serwada* noted that *'[o]rdinarily a party who withdraws his/her application is considered as having conceded the merits and, thus, is obliged to make a tender of the costs'*.³ However, in ordering the Minister of Home Affairs, who was the Respondent, to pay the Applicant's costs, the court convincingly held that:

'[i]n this case what triggered a withdrawal of the application was a response by the respondent which satisfied the relief sought in a way that exonerated the Court from making a determination whether or not the passport and temporary resident certificate should be returned to the applicant. It seems to me that the Court is not confronted with an ordinary situation of a concession on the merits made through the withdrawal of the application. That the withdrawing party should bear the costs cannot be regarded as a hard and fast rule in the circumstances of this case. The Court has a general jurisdiction to make a proper allocation of costs in the exercise of its judicial discretion ...'

² [2011] JOL 27643 (ECM).

³ Ibid para 3.

7. Similarly, in *VDM v VDM*,⁴ the owner of the property sought an order directing the tenant to vacate his property as a matter of urgency. By the time the application was called in the urgent court, the tenant had vacated the premises. In awarding the property owner costs against the tenant, who was the Respondent in the matter, the court held that:

'[t]he position is consequently that the applicant has brought an application of undisputed urgency, which was justified and well-founded, in order to address unlawful action on the part of the respondent. The respondent, by his actions, has essentially conceded the application. The usual rule in such circumstances is that an applicant should be awarded costs. I see no reason to depart from that'.

8. In *Sapirstein and Others v Anglo African Shipping Co (SA) Ltd*, the Appellate Division (as it then was) held that:

'[g]enerally speaking, awards of costs are, of course, in the discretion of the Court and that discretion must be judicially exercised whenever the need arises'.⁵

9. *Prithilal v Akani Egoli (Pty) Ltd and Another*, the Constitutional Court held that

'[t]he judicial power to order costs requires the court to exercise a discretion. Unless a judicial officer gives reasons, it is impossible to know whether the discretion was exercised at all or, if it was, whether it was exercised properly'.⁶

10. In *Hull v Free Market Foundation (Southern Africa) and Others*, it was held that where the court is not obliged to consider the merits of the application because the Respondent had substantially complied with the orders sought by the Applicant even before the court determined the matter:

⁴ (16838/2024) [2024] ZAWCHC 210 (6 August 2024).

⁵ 1978(4) SA 1 (A) at 14.

⁶ (CCT 290/24) [2025] ZACC 5; 2025 (8) BCLR 921 (CC) (24 April 2025) para 8. This principle was quoted with approval in *Intercontinental Exports (Pty) Ltd v Fowles* [1999] 2 All SA 304 (A) para 24 and *Road Accident Fund and Others v Hlatshwayo and Others* [2025] 2 All SA 333 (SCA) para 24.

*‘... the relevant considerations in such a case are (a) the merits of the application; (b) the manner in which the parties conducted themselves ... and (c) whether any party took unnecessary steps or adopted a wrong procedure’.*⁷

11. It appears that even though the matter has become moot. There is no need to ‘reflect’ on the possible outcome of this case had the First Respondent not decided to investigate the Second Respondent. The fact is that there is no longer a dispute on the merits. However, in light of *Hull*, there is nothing that precludes the court from considering the merits of the case.
12. On 26 February 2024, the Applicant delivered a charge to the First Respondent against the Second Respondent’s accounting authority. The charge related to various complaints of misconduct allegedly committed by the Second Respondent’s board.
13. The Applicant alleges that it has *locus standi* in this matter because it is an interested party and the relevant provisions of the Public Finance Management Act do not define the class of persons who may proffer a charge against the accounting authority. They merely outline the procedure to be followed when a charge of financial misconduct is made against the accounting authority. Once a charge of financial misconduct is alleged, the First Respondent is compelled to investigate.
14. According to the First Respondent, the Applicant sought a *mandamus* or mandatory final interdict without addressing and satisfying any of its requirements in his founding papers, but only belatedly and insidiously attempted to do so in reply.
15. The First Respondent further submitted that the relevant provisions of the Public Finance Management Act vest the power to institute the charge against the Board on the Second Respondent and not the Applicant. Further, the Second Respondent never refused to hold the Board of the Second Respondent accountable. The First Respondent is continuing with her investigations, which she had decided to undertake. There was never a cause of action for this application.

⁷ (2021/39680) [2023] ZAGPJHC 103 (8 February 2023) para 26.

16. It was further submitted that the statutory scheme of the Public Finance Management Act does not entitle the Applicant to compel the First Respondent to investigate. It was argued on behalf of the First Respondent that the Applicant failed to establish a case that would have made it possible for it to be awarded costs.
17. Furthermore, it was argued that the First Respondent did not act because of any application brought by the Applicant. The court was informed that the First Respondent had never been opposed to an investigation being conducted against the Second Respondent. It is for these reasons that the First Respondent contends that the Applicant is not entitled to costs in this application.
18. It was argued on behalf of the Applicant that the basis for the opposition to the Applicant's request for costs is baseless. I agree with this submission. The First Respondent's approach in opposing the Applicant's argument on costs seeks to invite this court to determine the merits and decide the Applicant's entitlement to bring this application and whether the requirements of an interdict have been established. In my view, since the First Respondent has substantially complied with the First Respondent's main prayer in the notice of motion, there is no need to do this.
19. It was correctly argued on behalf of the Applicant that, in light of the First Respondent's decision to investigate the Second Respondent after this application had been brought, the Applicant has been substantially successful because that is the order that the Applicant sought from the court.
20. In my view, there is no need for this court to pronounce itself on the merits. The fact is that there was a reason for the Applicant to bring an application against both Respondents. At the time the matter was issued in court and served on the parties, a live dispute existed that required adjudication by the court.
21. It is a common cause that the First Respondent received a charge in February 2024 and did not take any action that could have prevented the Applicant from instituting this Application. The First Respondent only reacted after the Application

was instituted, first with a letter from the State Attorney and secondly, a letter that came directly from her. Both these letters were served on the Applicant after this Application was lodged. For this reason, it is difficult not to conclude that the Applicant's application prompted the First Respondent's decision to investigate the Second Respondent.

22. Following the Applicant's application, the First Respondent decided to investigate the Second Respondent even before the court could hear the application. This means that she conceded the merits of the Applicant's case, making it unnecessary for the Applicant to proceed with its case. If the First Respondent believed in the facts that were advanced in opposition to the Applicant's case and her interpretation of the relevant provisions, she ought not to have acted in accordance with what the Applicant sought in its notice of motion.

23. In relation to the First Respondent's conduct, the facts of this case illustrate that she had enough time to decide to investigate after receiving the charge from the Applicant in February 2025. But she did not do so. Even after receiving the application papers in May 2025, she could have initiated negotiations with the Applicant to halt this litigation, but she failed to do so.

24. The First Respondent decided to inform the Applicant that she decided to investigate a month after receiving the papers for this Application. This was also an opportune time to engage the Applicant to prevent this litigation from proceeding. However, she decided to oppose this application even though she had already decided to investigate.

25. This led to the Applicant delivering its replying affidavit and application for leave to submit further evidence, as well as the preparation of practice notices and heads of argument. These are costs that ought to have been avoided. The conduct of the First Respondent directly led to the Applicant incurring unnecessary costs in this litigation, which is regrettable. By opposing the application after having decided to institute an investigation against the Second Respondent, the First Respondent took an unnecessary step.

26. The facts of this case and the chronology of events that preceded the hearing of the matter justify costs being awarded against the First Respondent. In other words, the Applicant is entitled to the costs of this application.

ORDER

27. In the premises, I make the following order:

27.1. Leave to file the letter of appointment of Nexis Forensic Services (Pty) is granted.

27.2. The First Respondent is to pay the costs of the application on a party and party basis, including counsel's fees on Scale B.




C MARUMOAGAE

ACTING JUDGE OF THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION

PRETORIA

Counsel for the Applicant : Adv I Veerasamy

Instructed By : Norton Rose Fulbright South Africa Inc.

Counsel for the First Respondent : Adv SBW Nhantsi

Instructed By : State Attorneys

Date of Hearing : 30 May 2025

Date of Judgment : 01 September 2025