

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG

(1)	NOT REPORTABLE
(2)	NOT OF INTEREST TO OTHER JUDGES

CASE NO: 2021-52977

DATE: 17 November 2025

In the matter between:

ROBERTO BRONDANI

Plaintiff

and

MAURO BRONDANI

Defendant

Neutral Citation: *Brondani v Brondani* (2021-52977) [2025] ZAGPJHC --- (17 November 2025)

Coram: Adams J

Heard: 11 November 2025

Delivered: 17 November 2025 – This judgment was handed down electronically by circulation to the parties' representatives by email, by being uploaded to *CaseLines* and by release to SAFLII. The date and time for hand-down is deemed to be 10:00 on 17 November 2025.

Summary: Civil procedure – court-annexed Mediation in the Gauteng High Court – Uniform Rule of Court 41A, read with the *Directive introducing*

Mandatory Mediation in the Gauteng Division and the Protocol thereto (Including the amendments effected as and at 27 October 2025) – application for an order compelling the defendant to cooperate in the appointment of a mediator and in the furtherance of the mediation process in accordance –

Grounds on which mediation may be avoided – to be set out in an ‘amplified rule 41A notice’ – cogent reasons (specifically and directly applicable to the unique facts of the matter) should be proffered motivating why the matter cannot be resolved, either in full or partially, by mediation – if rule 41A notice does so, it is not an ‘irregular notice’ as per para 4.7 of the Protocol – however, whether those grounds are valid to be decided upon by an Umpire or by the Special Interlocutory Court –

Held that extreme acrimony between the parties and the fact that one of the parties to the litigation believes subjectively that the mediation would be a waste of time are not valid grounds on which referral to mediation should be refused – to hold otherwise would defeat the purpose and the aim of court-annexed mediation – a Mediator is an impartial third party who helps the parties identify solutions and to understand each other – mediation is facilitative and the Mediator facilitates a process of communication between the parties –

The defendant compelled to cooperate in the appointment of a mediator and in the furtherance of the mediation process in accordance with the Mediation Directive and the Protocol thereto.

ORDER

- (1) The defendant shall cooperate in the appointment of a mediator and in the furtherance of the mediation process in accordance with the Mediation Directive and the Protocol thereto.
- (2) The defendant be and is hereby compelled to, within ten days from date of this order, deliver an amplified rule 41A notice in terms of para 4.6 of the Mediation Protocol, stipulating *inter alia* his preference for the administration of the mediation process in accordance with paragraph 3.1 of the Mediation Protocol and the name and relevant details of one or more proposed mediator(s).
- (3) The plaintiff shall respond within ten days from date of delivery of the defendant's aforesaid amplified rule 41A notice, by delivering his further amplified rule 41A notice in terms of 4.6.2 of the Protocol.
- (4) Each party shall bear his own costs of this opposed interlocutory application.

JUDGMENT

Adams J:

[1]. I refer to the parties as referred to in the main action in which the plaintiff sues the defendant for damages allegedly resulting from an assault on the person of the plaintiff by the defendant during December 2019. The quantum of the damages claimed by the plaintiff is just over R1 million. The defendant has preferred a counterclaim against the plaintiff for just over R2.5 million, alleging that it was in fact the plaintiff who assaulted him, thus causing serious injuries to his (defendant's) throat and voice box.

[2]. Before me is an interlocutory application by the plaintiff, in terms of Uniform Rule of Court 41A, read with the *Directive introducing Mandatory Mediation in the Gauteng Division and the Protocol thereto* (Including the amendments effected as and at 27 October 2025). The application is for an order compelling the defendant to comply with the mandatory provisions of the *Mediation Protocol applicable in the Gauteng Division of the High Court – As Amended by 27 October 2025* ('the Mediation Protocol'). The plaintiff, in particular, applies in terms of para 4.9 the Mediation Protocol for an order in the following terms: -

- '(1) Directing the [defendant] to file a compliant amplified Rule 41A notice in compliance with paragraphs 4.6.2 to 4.6.2.8 of the Mediation Protocol applicable in the Gauteng Division of the High Court (the "Mediation Protocol").
- (2) Directing the [defendant] to cooperate in the appointment of a mediator or the furtherance of the mediation process in accordance with the Directive introducing Mandatory Mediation in the Gauteng Division and the Mediation Protocol.
- (3) Directing the [defendant] to bear the costs of this application on such punitive scale as the Court deems fit in terms of paragraph 4.10.1 of the Mediation Protocol.
- (4) Further and/or alternative relief.'

[3] The defendant opposes the plaintiff's interlocutory application on the basis that he 'does not agree to the referral of this matter to mediation'. The defendant submits, in his notice in terms of rule 41A(2)(b), that the dispute is one which is incapable of resolution through mediation, which will, according to him, 'prolong the already protracted litigation and increase the costs of litigation for all parties involved'. The case on behalf of the defendant is furthermore that the parties have on various occasions attempted to settle the matter, with no success. To employ a mediator, so the contention on behalf of the defendant is concluded, will only result in further unnecessary and wasted costs as the disputed facts, and a finding of fault on the part of either party, fall well outside the scope of a mediator's mandate.

[4] In his answering affidavit in opposition to the plaintiff's application, the defendant adopts the same attitude and remains adamant that the dispute between the parties cannot be mediated. The defendant expresses these sentiments in strong and at times dismissive terms – that being dismissive of the mediation processes envisaged by the Directive and the Protocol. So, for example, the defendant has this to say in his answering affidavit: -

- '(26) As stated above, I refused to settle the matter and pay the plaintiff even as little as one Rand for the injuries that I did not inflict.
- (27) I am an elderly man with a limited source of income. I refuse to pay a mediator tens of thousands of rands to attempt to settle the matter between myself and the plaintiff and in terms of which I refuse to pay any sort of compensation towards the plaintiff.
- (28) Besides the above, what the plaintiff seeks the mediator to make pronouncements on simply falls outside of the scope of what a mediator is supposed to adjudicate upon.
- (29) For example, the mediator is ill equipped to make any sort of pronouncement as to what the cause of the assault was.
- (30) The mediator's opinion as to who the instigator of the assault was, is equally irrelevant.'

[5] From the foregoing it is abundantly clear that the defendant holds the view that mediation in this matter would serve no purpose – none whatsoever, and that in the circumstances of this matter mediation is bound to fail.

[6] The issue to be considered in this interlocutory application is simply whether the stance adopted by the defendant in this matter vis-à-vis mediation is a valid ground on which mediation can and should be avoided. Closely related to the foregoing is the issue relating to whether or not the defendant's rule 41A(2)(b) notice can and should be classified as 'irregular' as envisaged by para 4.7 of the Mediation Protocol, which reads as follows: -

'4.7 Irregular Notices:

- 4.7.1 A generic Rule 41A notice delivered by a party (the delinquent party) to another party (the aggrieved party), either of its own volition or in response to the receipt of an Initial Rule 41A Notice or an Amplified Rule 41A Notice from the aggrieved

party, as the case may be, which simply rejects the referral of the matter to mediation without cogent reasons (specifically and directly applicable to the unique facts of the matter) motivating why:

- 4.7.1.1 the matter cannot be resolved, either in full or partially; and
- 4.7.1.2 none of the other aspects provided for in terms of Rule 41A including:
 - 4.7.1.2.1 the identification and classification of issues in dispute, and
 - 4.7.1.2.2 the procedural aspects and timelines to be applicable to the further conduct of the matter

can be dealt with by way of mediation, is inadequate and constitutes an irregular notice (irregular notice).

- 4.7.2 An aggrieved party who received such an irregular notice shall be entitled to proceed in accordance with the provisions of Rule 30A. Furthermore, the provisions that relate to delinquent parties, as set out in paragraph 4.9 below, shall be applicable and the aggrieved party shall be entitled to proceed accordingly.'

[7] As for the latter dispute, I am of the view that the defendant's rule 41A(2)(b) notice does comply with the requirements of the Protocol and that same is not an 'irregular notice', as envisaged by para 4.7 *supra*. The said notice does, in my view, set out 'cogent reasons, specifically ... applicable to the unique facts of the matter'. Those facts are that the matter has had a long and a tedious history and that there have been many attempts to settle the matter, all of which endeavours have been fruitless. The notice therefore indicates by implication that the defendant sees no need to refer to the other issues mentioned in para 6.2 of the Protocol. The point is that once a party indicates in her/his amplified rule 41A(2)(b) notice that she/he disagrees with the referral of their matter to mediation and he sets out cogent reasons why that is so, there is no need for him or her to deal with any of the other issues referenced in paras 4.6.2 and 4.8.3 of the Protocol.

[8] The question remains, however, whether the defendant's response grounds the parties being excused from mediating the issues in dispute between them. In short, I think not. And I do so for the reasons set out in the paragraphs which follow.

[9] It cannot possibly be that a litigant's belief, however genuinely held, can be decisive in deciding whether a matter should be subjected to mediation. The fact that parties are involved in litigation probably means, more often than not, that they do not believe that the matter is capable of resolution. Neither can the fact that the parties have previously attempted settlement dictate that a matter cannot be mediated. To hold otherwise would, in my view, defeat the purpose of the mediation processes as envisaged by the Court Annexed Mediation Directive and the Protocol thereto.

[10] The purpose and the aim of the Directive and the Protocol, as expressly provided for in para 2 of the Protocol is to provide a structured standardised yet flexible framework for implementing court-annexed mediation in this Division of the High Court. Importantly, the Protocol aims to promote the use of mediation as an alternative dispute resolution mechanism to alleviate congestion on the court rolls, as well as to enhance access to justice by providing an efficient, cost-effective and less adversarial method of resolving disputes. Moreover, and this is important particularly *in casu*, the aim of the Protocol is to foster a culture of cooperation and mutual respect among litigants.

[11] The point is that, if regard is had to the purpose and the aim of the Protocol, parties should be excused from subjecting their disputes to mediation only in exceptional circumstances. Extreme acrimony between the parties and the fact that one of the parties to the litigation believes subjectively that the mediation would be a waste of time, are not exceptional circumstances. The stance adopted by the defendant in this matter misses the point of Court-annexed Mediation and loses sight of the fact that a Mediator is an impartial third party who helps the parties identify solutions. The mediator asks questions, reframes issues and helps the parties understand each other¹. The Protocol also obliges the parties to act in good faith during the mediation process and to participate actively and constructively in mediation sessions. Moreover, the style of mediation for the Protocol is required to be facilitative in

¹ See paras 6.4.10 and 6.5 of the Mediation Protocol.

that the Mediator facilitates a process of communication between the parties, so as to assist the parties to craft their own unique solution to the dispute².

[12] For all of these reasons, I am of the view that the defendant should be compelled to cooperate in the appointment of a mediator and in the furtherance of the mediation process in accordance with the Mediation Directive and the Protocol thereto. In particular, the defendant should, in an amplified rule 41A(2)(b) notice, indicate *inter alia*: (a) His preference for administration of the mediation process in accordance with paragraph 3.1 of the Protocol; and (b) The name and relevant details of one or more proposed mediator(s).

[13] As for costs, the defendant, in his opposition to the plaintiff's application and the mediation process, was clearly acting *bona fide* and in the genuine belief that the parties should be excused from subjecting their matter to mediation. It is also so that the Directive and the Protocol were introduced recently and the litigants are only just getting used to the new way of litigation in this Division. It can safely be said that the litigants are still feeling their way through these new rules and procedures.

[14] I am therefore of the view that there should be no order as to costs and that each party should bear their own costs relative to this interlocutory application.

Order

[15] In the result, I make the following order in terms of the Mediation Protocol: -

- (1) The defendant shall cooperate in the appointment of a mediator and in the furtherance of the mediation process in accordance with the Mediation Directive and the Protocol thereto.

² Para 6.5 of the Protocol.

- (2) The defendant be and is hereby compelled to, within ten days from date of this order, deliver an amplified rule 41A notice in terms of para 4.6 of the Mediation Protocol, stipulating *inter alia* his preference for the administration of the mediation process in accordance with paragraph 3.1 of the Mediation Protocol and the name and relevant details of one or more proposed mediator(s).
- (3) The plaintiff shall respond within ten days from date of delivery of the defendant's aforesaid amplified rule 41A notice, by delivering his further amplified rule 41A notice in terms of 4.6.2 of the Protocol.
- (4) Each party shall bear his own costs of this opposed interlocutory application.



L R ADAMS
Judge of the High Court
Gauteng Division, Johannesburg

HEARD ON:	11 November 2025
JUDGMENT DATE:	17 November 2025 – Judgment handed down electronically
FOR THE PLAINTIFF:	R J Bouwer
INSTRUCTED BY:	Martini Patlansky Attorneys, Morningside, Sandton
FOR THE DEFENDANT:	D J Coetsee
INSTRUCTED BY:	Lerena Attorneys, Sunninghill, Sandton