

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG

Case Number: 28053-2020

(1)	REPORTABLE: NO
(2)	OF INTEREST TO OTHER JUDGES: NO
(3)	REVISED: NO
<u>13/11/2025</u>	
DATE	SIGNATURE

In the matter between:

ELECTRO- HEAT ENERGY (PTY) LTD

Applicant/ Plaintiff

And

WETBACK CONTRACTS (PTY) LTD

Respondent/ Defendant

Case Number: 28052-2020

In matter between:

ELECTRO – HEAT ENERGY (PTY) LTD

Plaintiff / Applicant

And

WETBACK CONTRACTS (PTY) LTD

Defendant / Respondent

This judgment was handed down electronically by circulation to the parties' representatives by email and by uploading into the electronic file of this matter on Case Lines. The date for the hand- down of this judgment is deemed to be the 13th of November 2025.

JUDGMENT

KHABA, AJ

Introduction:

1. The applicant has launched an application for the consolidation of two actions instituted against the respondent under case number 28052/2020 and 28053/2020. This application is instituted in terms of Rule 11 of the Uniform Rules of Court. The applicant seeks relief to have both actions consolidated under case number: 28053/2020.
2. The respondent has opposed the consolidation application. The basis of opposition to the application is that the respondent will suffer prejudice

because of the alleged dispute on allocations of payments made for each invoice in respect of the four sites. The respondent contends furthermore that because of the different sites and the disputes relating to allocation of payments on each invoice, the cases must remain separate.

Issues to be determined:

3. Whether both actions under case number: 28052/2020 and 28053/2020 should be consolidated.
4. Whether the applicant has made out a case for the consolidation of both actions under case number 28052/2020 and 28053/2020.
5. Whether the respondent will suffer any prejudice as a result of the consolidation of both actions.
6. Having heard the arguments from both counsels' and having read the documents filed of record, I delivered an *ex-tempore* judgment on the 28th of October 2025, and I now therefore give my reasons thereto.

Background:

7. The factual matrix is largely common cause. The parties entered into four interrelated agreements concerning scaffolding services and equipment hire at the Medupi and Kusile power stations. These comprise a services agreement and a separate hire agreement for each site.
8. The applicant's claims in both actions are for payment of outstanding invoices under these agreements. A central point of contention, which permeates both actions, is the allocation of payments made by the respondent from a single bank account across the four different agreements.

9. Crucially, the respondent has instituted identical counterclaims in both actions, asserting that it overpaid the applicant and seeking repayment. The applicant correctly points out that the respondent's own pleadings confirm that the basis for these counterclaims—the interpretation and application of provisions relating to compensation events in the NEC agreements—is the same in both matters. The respondent's justification for this duplication, that it was done as a "*precaution*," does not detract from the substantive identity of the claims.

The Legal Framework and Analysis:

10. Rule 11 of the Uniform Rules of Court affords this Court a wide discretion to order the consolidation of actions where it is convenient to do so. The overriding consideration is one of convenience, which encompasses the avoidance of a multiplicity of legal proceedings, the risk of conflicting judgments, and the associated saving of costs. A further relevant consideration is that the party seeking consolidation must demonstrate that it will not cause prejudice to the other party, or that any potential prejudice is outweighed by the benefits of consolidation.

11. As pointed out in *New Zealand Insurance Co Ltd v Stone*,¹ Corbett AJ (as he then was) held:

"In such an application for consolidation the Court, it would seem, has a discretion whether or not to order consolidation, but in exercising that discretion the Court will not order a consolidation of trials unless satisfied that such a course is favoured by the balance of convenience and that there is no possibility of prejudice being suffered by any party. By prejudice in this context, it seems to me is meant substantial prejudice sufficient to cause the Court to refuse a consolidation of actions, even though the balance of convenience would favour it. The authorities also appear to establish that

¹1963 (3) SA 63 (C) at 69.

the onus is upon the party applying to Court for a consolidation to satisfy the Court upon these points.”

12. The following three principles may be derived from this judgment:

- a. Firstly, the Court has a discretion.²
- b. Secondly, this discretion is subject to two limits:
 - (i) Consolidation must be convenient,³ not only in the sense of facility or expedience or ease, but also appropriateness in the sense that it will be fitting and fair to the parties.⁴
 - (ii) Consolidation should not be granted if it would cause the other party substantial prejudice.⁵
 - (iii) Thirdly, the party seeking consolidation has the onus to show that it will be convenient and will not cause prejudice.⁶

13. The Court’s discretion is limited regarding prejudice, examples of the nature of the prejudice required includes:

- a. Where consolidation would be procedurally inappropriate;⁷

² *Rail Commuters' Action Group and Others v Transnet Ltd and Others* 2006 (6) SA 68 (C) 88AB.

³ *Nel v Silicon Smelters (Edms) Bpk* 1981 (4) SA 792 (A) 802B.

⁴ *Qwelane v Minister of Justice and Constitutional Development and Others* 2015 (2) SA 493 (GJ) para 10.

⁵ *Belford v Belford* 1980 (2) SA 843 (C) 846C-D and *Kriel N.O v Rockland Group Holdings (Pty) Ltd and Another; Born Free Investments 247 (Pty) Ltd v Kriel N.O* [2021] ZAWCHC 243 at para 23.

⁶ *Mpotsha v Road Accident Fund and Another* 2000 (4) SA 696 (C) 701D-F.

⁷ *AJVH Holdings (Pty) Ltd and Others v Steinhoff International Holdings NV and Another; AJVH Holdings (Pty) Ltd and Others v Steinhoff International Holdings NV and Others* [2020] ZAWCHC 46 at para 15

- b. If a party cannot avail themselves of the provisions of the Uniform Rules of Court dealing with the procedure;⁸
 - c. Where conflict might develop between plaintiffs about the quantum of damages;⁹ and
 - d. Where the legal frameworks that will ultimately determine the outcome of the actions are mutually exclusive.¹⁰
14. It is therefore a principle of our law that there must be a substantial overlap on issues of law and fact, either as between the plaintiff and defendant or between plaintiffs or defendants inter se in order for the consolidation application to be favourably considered. If actions do not concern substantially the same issue of law or fact, consolidation may not be granted.¹¹
15. As a jurisdictional requirement, where there is no overlap, the power to consolidate may not be exercised¹². Therefore, only after this process has been completed will the issues of fact and law be crystallised. Indeed, the purpose of pleadings is to clarify for the Court and the parties what the issues in the case are and on what essential facts reliance will be placed.¹³
16. I am satisfied that the applicant has met the requirements for a consolidation order. This view is fortified by the fact that the respondent in its counter claim allege the same facts as already set out above. There is

⁸ *London & Lancashire Insurance Co Ltd v Dennis NO 1962 (4) SA 640 (N) 645B-E.*

⁹ *New Zealand Insurance Co Ltd v Stone 1963 (3) SA 63 (C) 71D-H.*

¹⁰ *Belford* at 846B.

¹¹ D Harms, Civil Procedure, B11.1.

¹² *S A Defence & Aid Fund & Another v Minister of Justice 1967 (1) SA 31 (C) 34F-35D*, cited approvingly in *President of the Republic of South Africa and Others v South African Rugby Football Union and Others 2000 (1) SA 1 (CC)* para 168 fn 132.

¹³ *Imprefed (Pty) Ltd v National Transport Commission 1993 (3) SA 94 (A) 107C.*

no proven prejudice that will be suffered, and it will be for the convenience of Court that the matters be consolidated and heard as one.

17. Firstly, there is a clear and substantial overlap of common issues of law and fact between the two actions. Both actions arise from the same commercial relationship and the same set of operational facts at the two power stations. The contractual matrix, while comprising separate agreements, is inextricably linked. The core dispute regarding the allocation of payments and the respondent's mirror-image counter claims on identical legal grounds are present in both cases. To have these issues litigated separately before two different Courts carries a significant and unacceptable risk of conflicting judgments on the same contractual interpretation. This is precisely the kind of procedural inefficiency and legal uncertainty that Rule 11 is designed to prevent.
18. Secondly, the element of convenience weighs heavily in favour of consolidation. It is self-evident that having one trial, before one Judge, who will hear all the evidence and arguments pertaining to the entire contractual relationship, is the most efficient course. It will prevent the duplication of witness testimony, avoid the need for the same documents and legal arguments to be presented in two separate forums, and ultimately reduce costs for both parties. This serves not only the parties' interests but also the broader public interest in the efficient administration of justice.
19. Thirdly, I am not persuaded by the respondent's contention that consolidation will cause it severe prejudice. The respondent's primary argument is that the task of interpreting two different types of contracts simultaneously would be overly complex for a trial Judge, leading to potential confusion and elongated proceedings.

20. With respect, this argument underestimates the capacity of this Court to manage complex litigation involving multiple, interrelated agreements. It is the daily business of this Court to disentangle intricate contractual relationships. The suggestion that a single Judge is incapable of properly understanding and distinguishing between the terms of the services and hire agreements is not convincing. In fact, having one Judge consider the entire factual and contractual context is likely to lead to a more coherent and well-reasoned judgment.
21. Furthermore, the respondent's fear of an endlessly elongated trial is speculative. A consolidated trial is almost invariably shorter than the cumulative time of two separate trials dealing with overlapping issues. Case management techniques are available to the trial Judge to ensure the proceedings are conducted with efficiency and focus. The potential for some complexity is far outweighed by the certain prejudice of duplicative, costly, and potentially contradictory proceedings.

Costs:

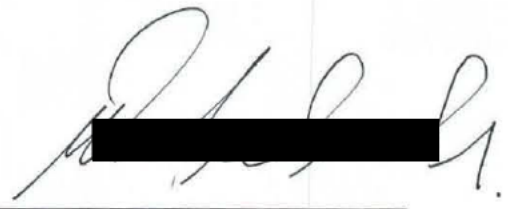
22. The general rule in matters of costs is that the successful party should be given his costs, and the rule should not be departed from except where there are good grounds shown for doing so, such as misconduct on the successful party or other exceptional circumstances. I cannot think of any reason as to why I should deviate from this general rule. The respondent should therefore be ordered to pay the costs of the applicant including costs of Counsel in this application.

Conclusion:

23. In the exercise of my discretion, I find that the considerations of convenience, the avoidance of a multiplicity of actions, and the imperative to prevent the risk of conflicting judgments decisively favour the granting of this application. The applicant has demonstrated that consolidation is the correct and just procedural path, and the respondent has not established any compelling, non-speculative prejudice that would outweigh these benefits.

24. Accordingly, the following order is made:

1. The applicant has satisfied the requirements for a consolidation application in terms of Rule 11 of the Uniform Rules of Court.
2. The action brought by the plaintiff against the defendant under case number 28052/2020 emanates from the same case action with the action under case number 28053/2020.
3. The action under case number 28052/2020 and the action under case number 28053/2020 are consolidated under case number 28053/2020 to be heard simultaneously for the purpose of trial and finalisation thereof.
4. The provisions of the Rules shall apply *mutatis mutandis* with regards to actions so consolidated.
5. The respondent is ordered to pay the costs of this application on party and party scale including cost of Counsel on scale C.




KHABA AJ

ACTING JUDGE OF THE HIGH COURT

GAUTENG DIVISION, JOHANNESBURG

Appearances:

For the Applicant:

Adv. C Picas

Instructed by

VZLR Inc Attorneys

For the Respondent:

Adv. R.F. de Villiers

Instructed by:

Deneys Zeederberg Attorneys Inc

Date of Hearing: 28 October 2025

Date of Judgment: 13 November 2025

