

REPUBLIC OF SOUTH AFRICA



**IN THE HIGH COURT OF SOUTH AFRICA
(MPUMALANGA DIVISION, MBOMBELA)**

Case Number: 1200/2021

(1) REPORTABLE: YES / NO
(2) OF INTEREST TO OTHER JUDGES: YES/NO
(3) REVISED: YES/NO

28 January 2026

DATE

SIGNATURE

In the matter between:

KENTY MFUNDO KHUMALO

PLAINTIFF

and

MINISTER OF POLICE

DEFENDANT

This judgment shall be handed down electronically by distributing same to the parties by email and by publication on SAFLII. Judgment shall be deemed to have been delivered at 10:00 on 28 January 2026.

JUDGMENT

MAYET AJ:

Order:

[1] The matter is postponed to the trial week 27 January 2026 as matter number 7.

[2] The Defendant to pay the costs of the postponement on a party and party taxed on Scale B.

JUDGMENT

MAYET AJ:

Introduction

[1] This judgment concerns the appropriate costs order following the postponement of a trial set down for hearing on 4 November 2025.

[2] A postponement was sought by the Defendant, with the consent of the Plaintiff, after it emerged that the Defendant sought to bring a substantive application to withdraw an admission erroneously made in the pre-trial agenda. The postponement was granted, and the matter stood down to the trial week commencing 27 January 2026.

[3] The Defendant tendered wasted costs occasioned by the postponement on a party and party scale A. The Plaintiff requested that the Defendant be ordered to pay the wasted costs on an attorney and client scale C. At the request of the court, the parties furnished heads of argument regarding the appropriate order of costs.

Issue for Determination

[4] The sole issue is whether the Plaintiff is entitled to costs on the attorney-and-client scale, or whether the ordinary party-and-party scale is appropriate.

[5] The question before the Court is not whether costs should follow the postponement that much is common cause but whether the Defendant's conduct warrants the imposition of a punitive costs order.

[6] Put differently, the Court must determine whether the postponement was occasioned by conduct sufficiently blameworthy, abusive, or vexatious to justify a departure from the ordinary rule that wasted costs are awarded on a party-and-party basis.

Applicable Principles

[7] It is trite that the award of costs lies within the discretion of the Court, to be exercised judicially and upon a consideration of all relevant circumstances.

[8] The allocation of costs in litigation is a critical aspect of civil procedure, as it determines the financial burden borne by the parties involved.

Party and Party Costs

[9] Party and party costs are awarded to indemnify the successful litigant for expenses incurred in initiating or defending litigation. These costs are limited to those deemed necessary or proper for the attainment of justice, as determined by the taxing master.

[10] The determination of which scale of costs is applicable under the party and party scale regime is dictated by the provisions of Rule 67A of the Uniform Rules of Court. Rule 67A(3) provides that a court "*shall*", when making a party and party costs order, "*indicate the scale in terms of rule 69, under which costs have been granted*".

[11] Under Rule 67A, which came into effect on 12 April 2024, party and party costs in the High Court are awarded on one of three scales: A, B, or C. The chosen scale is determined by the case's importance, value, and complexity.

[12] *Mashavha v Enaex Africa (Pty) Ltd and others*¹ provides a description of the inherent characteristics of each scale:

[1] Scale A is the lowest scale and will be applied by default if no scale is specified. Scale A applies to less complex matters and provides a maximum tariff of R375 per quarter hour.

[2] Scale B falls in the middle of the spectrum for matters of medium complexity and sets a maximum tariff of R750 per quarter hour.

[3] Scale C is the highest scale when party and party costs are ordered for cases of significant complexity and public interest; it sets a maximum tariff of R1 125 per quarter hour.

[13] The effect of different cost scales is to determine the rate at which costs can be taxed.

Attorney and Client Costs

[14] Attorney and client costs are broader than party and party costs and include reasonable expenses incurred by the attorney, even if not strictly necessary for the attainment of justice.

¹ *Mashavha v Enaex Africa (Pty) Ltd and others* [2024] JOL 64269 (GJ) at para 7-11

[15] The purpose of attorney and client costs is to provide the successful litigant with a full indemnity for reasonable costs incurred. However, these costs are still subject to the discretion of the taxing master, who must ensure they are fair and reasonable.

[16] While costs ordinarily follow the result, punitive costs orders are exceptional. They are reserved for cases where a litigant's conduct can properly be characterised as vexatious, reckless, dishonest, mala fide, or constituting an abuse of the Court's process. They are often awarded in cases where the losing party has acted dishonestly, fraudulently, or vexatiously.²

[17] As the court stated in *Multi-links Telecommunications Ltd v Africa Prepaid Services Nigeria Ltd*,³ punitive costs orders are not imposed merely because a party has erred or failed to comply with procedural rules. They are reserved for conduct that materially departs from the standard expected of litigants and their legal representatives.

[18] In *Uzani Environmental Advocacy CC v BP Southern Africa (Pty) Ltd*,⁴ the court awarded attorney and client costs due to the defendant's misleading conduct, highlighting the punitive nature of such orders.

² Nel v Waterberg Landbouwers Ko-operatiewe Vereniging 1946 AD 597.

³ Multi-links Telecommunications Ltd v Africa Prepaid Services Nigeria Ltd (35347/13, 30004/13) [2013] ZAGPPHC 261; [2013] 4 All SA 346 (GNP); 2014 (3) SA 265 (GP) (6 Sept 2013) at para 31

⁴ Uzani Environmental Advocacy CC v BP Southern Africa (Pty) Ltd (Judgment on Costs), [2025] JOL 68816 (GP) at para 32

THE PARTIES' CONTENTIONS

The Plaintiff's case

[19] The Plaintiff contends that the postponement was occasioned by the Defendant's failure to comply with the Rules of Court and the Practice Directives of this Division, notwithstanding that the matter had been certified trial-ready and allocated to a trial judge.

[20] It is argued that the Defendant had ample opportunity to regularise its position and that the postponement resulted in prejudice to the Plaintiff, including further delay in the finalisation of a matter arising from events dating back to 2020.

[21] On this basis, the Plaintiff submits that the Court ought to mark its displeasure by awarding costs on an attorney-and-client scale, taxable immediately.

The Defendant's case

[22] The Defendant accepts that it bears responsibility for the postponement and tendered costs on the party-and-party scale.

[23] It submits, however, that the postponement was sought in order to correct a procedural irregularity and to ensure that the matter proceeds to trial on a proper and compliant record.

[24] The Defendant denies that its conduct was mala fide, dilatory, or abusive, and emphasises that the Plaintiff consented to the postponement. It contends that the circumstances do not justify the imposition of punitive costs.

Evaluation

[25] Party and party costs and attorney-client costs serve distinct purposes in litigation. Party and party costs aim to indemnify the successful litigant within the bounds of prescribed tariffs, while attorney-client costs provide broader compensation for reasonable expenses incurred. The introduction of scales A, B, and C under Rule 67A allows courts to tailor cost awards to the complexity and importance of cases.

[26] The starting point is that the Defendant sought an indulgence and must bear the wasted costs occasioned by the postponement. This principle is uncontroversial.

[27] The more difficult question is whether the Defendant's conduct rises to the level that warrants a punitive costs order.

[28] There is no suggestion on the papers that the postponement was sought for an ulterior purpose, to delay the proceedings strategically, or to cause prejudice to the Plaintiff. Nor is there evidence of dishonesty, bad faith, or a deliberate flouting of the Court's authority.

[29] The Defendant's explanation that the postponement was required to address an erroneous admission is not implausible, nor is it inconsistent

with a bona fide attempt to ensure that the matter proceeds to trial in accordance with the Rules.

[30] Our jurisprudence makes clear that a party who seeks an indulgence must ordinarily bear the wasted costs occasioned thereby, but this does not, without more, justify an attorney-and-client costs order.

[31] While the Plaintiff understandably emphasises the history of delay and the prejudice inherent in further postponement, these considerations do not, without more, transform procedural non-compliance into conduct warranting punishment.

[32] Importantly, the Plaintiff consented to the postponement, subject to costs. While such consent does not preclude a punitive costs order, it is a relevant factor in assessing whether the Defendant's conduct was so egregious as to justify a departure from the ordinary scale.

[33] Courts must guard against the conflation of error or neglect with abuse of process. The former attracts the ordinary costs consequences; the latter justifies punishment.

[34] In this matter, the Defendant's conduct, while warranting censure through an adverse costs order, does not cross the threshold required for an attorney and client award.

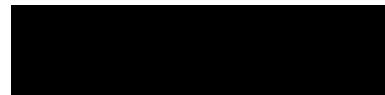
[35] A punitive costs order would, in the circumstances of this case, be disproportionate and inconsistent with the principles governing the exercise of the Court's discretion.

[36] The case presently before me, was competently and ethically pursued by all concerned. Both parties produced extensive heads of argument and I am of the view that the interests of justice are served by awarding the wasted costs occasioned by the postponement on the party-and-party Scale B.

[37] Consequently, I make the following order:

ORDER

[1] The Defendant is ordered to pay the Plaintiff's wasted costs occasioned by the postponement of the trial heard on 4 November 2025, on the party and party taxed on Scale B.



N MAYET
ACTING JUDGE OF THE HIGH COURT

Date of hearing : 4 November 2025

Date of judgment : 28 January 2026

APPEARANCES

For the Plaintiff : ADV M MAGAGULA

Instructed by : CHEGO ATTORNEYS

For the Defendant : ADV LH MAKAMU

Instructed by :

