



- (1) Reportable: Yes/NO
 (2) Of interest to other Judges: Yes/No
 (3) Revised

Signature

Date

30/Jan/26

IN THE LABOUR COURT OF SOUTH AFRICA, CAPE TOWN

Case No: 2025-188741

In the matter between:

SPRINGPOINT FINANCE (PTY)LTD

Applicant

and

MELISA FOURIE

First Respondent

MULTIVEST FINANCIAL PLANNING (PTY)LTD

Second Respondent

Heard: 4 December 2025

Delivered: Judgment was handed down electronically by circulation to the parties' representatives by email. The date and time for the hand-down is deemed 30 January 2026.

Summary: Withdrawals and Postponements Rule 43 (1)(b) application for costs, Restraint of trade application withdrawn for transfer to High Court as per Applicant, without tendering costs. Prayer for costs on attorney - and-own - client scale including Counsel's costs on scale C applicable in the High Court, costs for drafting and arguing the Rule 43 application. Do costs follow the cause in Labour disputes? Judicial discretion entrenched in section 162 of Labour Relations Act requirements of law of fairness. *Stari decisis* from the Labour Appeal Court and Constitutional Court.

JUDGMENT

GURA, AJ

Introduction

- [1] This judgment relates to an application in terms of Rule 43 (1)(b), by the First and Second Respondents that the Applicant be ordered to pay the attorney and own client costs incurred in the main application. The Restraint of Trade, being Scale C applicable in the High Court for the attorney costs of the First and Second Respondents. Secondly, that the said costs be that applicable in the High Court for Counsel costs of the First and Second Respondents. The Third Prayer is that the Applicant also be liable for the costs incurred by the Respondents for the drafting and arguing of the application. Lastly, further and alternative relief.
- [2] The crux of the Respondent's prayers emanates from the Applicant's withdrawal of the main application, without a tender for costs. The Respondents argued that the Applicant had unnecessarily put them to expense. The Notice of Withdrawal was loaded on court's online correspondence and attached as MWN 2 .

The parties

- [3] The Founding Affidavit of Marthinus Wessel Naude was used in support of the application, a practicing attorney by Spamer Triebel Inc., instructed and mandated to act on behalf of the First and Second Respondent. Mr Naude in his affidavit prayed for costs on Attorney and own client scale. The Applicant is Springpoint Finance (Pty) Ltd, a company with limited liability, duly incorporated and registered with registration number 2011/11237307 launched the main application on 16 October 2025 on an urgent basis. First Respondent is an adult female and representative, second Respondent being Multivest FINANCAIL

Planning (Pty) (Ltd), a company with limited liability, duly incorporated and registered with registration number 2007/019698/07.

Background

- [4] The Respondents opposed the main application on 23 October 2025. On 4 November 2025 the Applicant obtained a new date for the application to be heard, being 4 December 2025, to ensure the timelines would be met in terms of the Rule 39, as the application was served out of time. On 7 November 2025, the Respondents delivered their answering affidavits. On 11 November 2025, the Applicant's attorneys served a notice of withdrawal, without tendering costs.
- [5] At all material times the Applicants were represented by Ms Paula Phukuje from Fairbridges Wertheim Becker, Advocate Liziwe Dwayi had been briefed. The Respondents Counsel on the day of the costs application, who argued the same was Advocate Bester on instructions of Spamer Triebel Incorporated. Counsel for the Respondents argued that the Applicants brought an application of 200 plus pages on an urgent basis in relation to Restraint of Trade, then simply withdrew without tendering costs. Further that the Respondent's client has incurred costs of more than R400 000.00, the Applicants have compounded pleadings with nothing making sense, approached the High Court Cape Town on an urgent basis in relation to the Restraint of Trade, set down for 19 December 2025, which the Respondents will oppose. The Respondent's Counsel placed on record that the Applicants were informed by the Respondents of the Arbitration Clause in the Agreement, hence the Respondent's actions of approaching the Labour Court, withdrawing and approaching the High Court, being vindictive and *mala fides*.
- [6] The Respondents then addressed correspondence to the Applicants on 12 November 2025, concerning the Notice of Withdrawal. MWN 2 was thus loaded on Court Online, the Notice of Motion and all requisite documents herein. The point of departure by the Respondents in relation to the Notice of Withdrawal contained in a letter of 12 November 2025, was to the effect that the withdrawal is accepted. Same which by the Rules must follow a tender for costs, which had not been offered by the Applicants. Contained in letter of 12 November 2025,

the Respondents proceeded to deal with Point 2 being transfer and Point 3 in relation to costs. Further that both points are irregular steps which the Applicants must accordingly withdraw.

- [7] Point 2 relating to transfer, the Respondents placed on record that it is common cause that the Labour Court is a specialist court established exclusively by the Labour Relations Act and not a division of the Superior Courts Act. Thus, the mechanisms of the Courts Act to transfer cases between Divisions can thus not be utilized, as the Labour Court does not have the competency to act in terms of the Courts Act. Thus, relief sought by the Applicants is *pro non scripto* and further that since the Applicant's withdrawal has been accepted, there is therefore no application left to transfer. Respondents placed on record that the Applicant must thus bring a *de novo* application before the Cape Town High Court.
- [8] Point 3 relating to costs, the Respondents argued that costs of one court can never be decided in another court. Further that each court has its own taxing master and own tariffed costs, own localized case law dealing with the nature of that division's allowable items on taxation, which is a field of law on its own. Further that the Applicant's withdrawal of the application entitles the other party to place the matter on the roll, just on the aspect of costs alone. The Respondents have accordingly attended to the same as per Rule 43 of the Labour Court Rules. Such costs to be ordered on the scale of attorney and own client scale in conjunction with the High Court scale C, taxed and or by agreement between the parties.
- [9] The merits in relation to the Restraint of Trade are not for this court to decide on. The Respondent's stance is to the effect that costs must follow the result. In terms of section 162 (1) of the Labour Relations Act the court has a wide discretion where it comes to the issue of costs. In adjudicating restraint of trade applications, the Labour Court exercises jurisdiction given to it to do so in terms of section 77 (3) of the Basic Conditions of Employment Act, 1997. Guidance is provided by the Constitutional Court when exercising its costs discretion under section 162 (1). In this respect, and in the *Union for Police Security &*

*Corrections Organisation v SA Custodia Management (Pty) Ltd & others*¹ the Court said:

‘In the labour context, the judicial exercise of a court’s discretion to award costs requires, at the very least, that the court must do two things. First it must give reasons for doing so and must account for its departure from the ordinary rule that costs should not be ordered. Second, it must apply its mind to the dictates of fairness standard in s 162, and the constitutional and statutory imperatives that underpin it...’

- [10] Judge Lalie in the case of *PSA obo Darren Rogger Sampson v Minister of Justice and Constitutional Development*² and I quote:

‘Although the respondent sought a costs order against the applicant on the basis that these proceedings are vexatious, the Constitutional Court has warned the Labour Court against using costs orders to deter employees from approaching it. While the applicant trade union would have pursued a different route in assisting the individual applicant, I am not convinced that it acted unreasonably in bringing this application. Granting a costs order in the circumstances will not be appropriate.’

- [11] The Applicants argued and submitted the Labour Court judgment of *SDG South Africa (Pty) Limited v Subsenthiran Pillay & another* from the Labour Court in Durban wherein the Labour Appeal Court in *Ball*³ explained the principles relevant to the costs associated with restraint of trade applications in the following terms:

‘... the enforcement of a restraint, technically, involves a constitutional issue. Restraints of the kind being considered, constitute a limitation on a citizen’s right, in terms of section 22 of the Constitution, which arguably, requires justification... In constitutional matters, the general rule that costs follow the result does not apply. In such matters costs orders are generally eschewed out of concern that they may produce a “chilling effect”, in that litigants may be deterred from approaching the court to litigate concerning an alleged violation of their constitutional rights for fear of being penalized with costs if they are

¹ (2021) 42 ILJ 2371 (CC) at para 35.

² [2024] ZALCPE 43 at para 15.

³ *Ball v Bambalela Bolts (Pty) Ltd and Another* at para 16.

unsuccessful .If constitutional matters are raised or defended in good faith and not vexatiously and the issues raised have merit or are important , like the violation of a right guaranteed in the Bill of Rights , and the proceedings that ensued resolved those issues, the party complaining of the violation , even if unsuccessful would , generally , not be ordered to pay cost.'

- [12] In yet another Labour Court Judgment of *Duster Dollies Central (Pty) (Ltd) v Behr and Others*⁴ Daniels J held, and I quote:

'The second and third respondents sought a cost order against the applicant on the basis that they were improperly joined. I agree, they should not have been dragged to court in these circumstances. They have no legal interest in this matter... In the circumstances, as against the second and third respondents, the application was frivolous and vexatious. The applicant is ordered to pay the costs of the second and third respondents.'

- [13] The Applicants argued and placed on record the Constitution Court judgment of *Zungu v Premier of the Province of KwaZulu-Natal and Others*⁵ (*Zungu*) referring to *Member of the Executive Council for Finance, KwaZulu-Natal and Another v Dorkin NO and Another*⁶ which states:

'The rule of practice that costs follow the result does not govern the making of orders of costs in this Court. The relevant statutory provision is to the effect that orders of costs in this Court are to be made in accordance with the requirements of the law and fairness. And the norm ought to be that costs orders are made unless the requirements are met. In making decisions on costs orders this Court should seek to strike a fair balance between on the one hand, not unduly discouraging workers, employers, unions and employers organisations from approaching the Labour Court and this Court to have their disputes dealt with, and, on the other, allowing those parties to bring to the Labour Court and this Court frivolous cases that should not be brought to Court.'

Thus, the Constitutional Court set aside the costs order granted by both the Labour Court and Labour Appeal Court.

⁴ [2024] ZALCJHB 233 at para 31.

⁵ [2018] ZACC 1 at para 24.

⁶ [2007] ZALAC 41 at para 19.

- [14] Section 162 (b) (ii) enjoins this court to have consideration of the conduct of the parties “during the proceedings before the Court”. Counsel for the Respondent’s outbursts and court ethics were to the Court an utter shock. The Court had to remind the Respondent’s Counsel about court ethics and Court decorum. The latter’s behaviour was, at some stage, unacceptable by the Applicant’s Counsel, who then requested the Court to intervene.
- [15] In considering section 162 (b) (ii), the conduct of the parties – (ii) in proceeding with or defending the matter before the Court. The South Eastern Cape Local Division in the case of *First National Bank of Southern Africa Ltd t/a Wesbank v First East Cape Financing (Pty) Ltd*⁷, the Respondent was directed to pay the costs incurred by the Applicant in respect of all steps taken by it in preparation for an application which the Applicant intended to move in this Court for an order in terms appearing from the notice of motion, and further ordered to pay costs of the application. In the case in question, the Applicant had been compelled to incur legal costs in preparing an application to protect its rights. The Respondent only consented to the relief sought after it had received a copy of the application before it was issued and served. Thus, the Applicant applied for an order directing the Respondent to pay the costs incurred in respect of all steps taken in preparation of the application. The court held further that nothing precluded a litigant, after laying sufficient before the Taxing Master, from claiming that pre-litigation costs be allowed in a party and party bill.⁸ This decision is not a labour-related judgment.
- [16] The common cause is that all the court decisions above from the High Court Labour Appeal Court and Constitutional Court, were loaded on Court online and argued by the Respondents herein. When this court requested Applicant’s Counsel to address this court on the same, the ratio decidendi and or orbiter dictum of any of the decisions, Counsel’s response and or reply was to the effect that same were necessary nor relevant.
- [17] Having heard all the submissions and arguments before me, moreover bound by decisions of the Constitutional Court, with particular reference to the *Zungu*

⁷ 1999 (4) SA 1073 (SE).

⁸ Ibid at 1079F.

judgment in relation to costs orders in Labour Court matters, there is no order as to costs.

A handwritten signature in black ink, appearing to be 'L. Gura', is written over a solid black rectangular redaction box. The signature is fluid and cursive.

L. Gura

Acting Judge of the Labour Court of South Africa

LABOUR COURT

Appearances

For the Applicant:

Adv Laziwe Dzai

Instructed by:

Fairbridges Attorneys

Appearances for the Respondent:

Adv Bester

Instructed by:

Mr Naude from Spamer Tribel Attorneys

LABOUR COURT