IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG LOCAL DIVISION, JOHANNESBURG

CASE NO: 2025-044185

DELETE WHICHEVER IS NOT APPLICABLE

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

(2) OF INTEREST TO OTHER JUDGES: YES/**NO**

(3) REVISED:

[redacted]

18/02/2026

....

DATE SIGNATURE

In the matter between:

NEPOWORX RENEWABLE ENERGY INSTITUTION (PTY) LIMITED Applicant

and

SOUTH AFRICAN PHOTOVOLTAIC INDUSTRY ASSOCIATION Respondent

In re:

SOUTH AFRICAN PHOTOVOLTAIC INDUSTRY ASSOCIATION Applicant

and

NEPOWORX RENEWABLE ENERGY INSTITUTION (PTY) LIMITED Respondent

This Judgment was handed down electronically and by circulation to the parties' legal representatives by way of email and shall be uploaded on caselines/courtonline. The date for hand down is deemed to be 18 February 2026.

JUDGMENT

MOGOTSI AJ

Introduction

[1] The central issue in this matter is whether the respondent is liable to pay the costs of the urgent application it instituted and later withdrew, or whether the court should exercise its discretion to order that each party bear its own costs.

Relevant background

[2] On 1 April 2025, the respondent launched an urgent application against the applicant seeking the reinstatement of Gauteng, Western Cape, Eastern Cape, Limpopo, and KwaZulu-Natal training and assessment centres' accreditations pending an internal appeal or review.

[3] On 4 April 2025, three days after the application was served, the applicant reinstated the accreditation of the Gauteng centre; however, it made it clear that the other four centres remained delisted because of separate compliance issues. On the same day, the respondent's attorneys acknowledged that the reinstatement of the Gauteng centre rendered part of the application academic and moot. However, because the applicant persisted in maintaining the delisting of the other four centres, the application was not immediately withdrawn.

[4] On 1 September 2025, the respondent wrote a letter to the applicant stating that the matter had become moot because the balance of accreditations was expected to be

reinstated shortly. It further enquired whether the applicant would tender costs, and the latter failed to respond. The respondent, without formally tendering the costs, withdrew the application on 16 October 2025.

[5] This culminated in the current Rule 41(1)(c) application wherein the applicant is seeking an order that the respondent be ordered to pay punitive costs, alternatively costs on a party-and-party basis scale B, which the respondent is opposing. The latter did not file a formal answering affidavit and is thus relying instead on the existing record, inclusive of its replying affidavit and correspondence, to demonstrate the reasonableness of its conduct. The parties, relying on the matter of *Wildlife and Environmental Society of SA* v *MEC for Economic Affairs, Environment and Tourism, Eastern Cape*[1], are *ad idem* that this is legally permissible.

The Applicant's submissions

[6] Firstly, the applicant's counsel, relying on the matters of *Germishuys* v *Douglas Besproeingsraad*[2] and *ABSA Bank* v *Robb*[3] submitted that a withdrawer is in the same position as an unsuccessful litigant and must be mulcted with a cost order.

[7] Secondly, counsel submitted that the application lacked merit from the outset, and the withdrawal was an acknowledgement of that lack of merit. The respondent delayed the withdrawal for more than six months after the Gauteng centre reinstatement and only withdrew after the applicant had filed heads of argument.

[8] Finally, counsel submitted that the fact that the respondent persisted with a meritless application and withdrew it without tendering costs, justifies a punitive costs order as a mark of the court's disapproval.

[1] 2005 (6) SA 123 (E) at 129A D.
[2] 1973 (3) SA 299 (NC).
[3] 2013 (3) SA 619 (GSJ.

Respondent's submissions

[9] Firstly, the respondent's counsel submitted that the respondent's withdrawal due to mootness should not be construed as a concession of defeat. It was premised on the applicant's reinstatement of the Gauteng centre on 4 April 2025, and after it became clear that the other centres would also be reinstated. This, according to counsel, implies that the withdrawal was not a loss because the respondent obtained the core relief it sought, viz, Gauteng centre reinstatement through the pressure of litigation. Therefore, the applicant should not be rewarded with a costs order for having been compelled to do the right thing.

[10] Secondly, the counsel relying on the matter of *Conradie* v *Botes NO and Others*[4] submitted that in exercising its discretion, the court must consider whether the applicant acted reasonably in launching the application.

[11] Thirdly, counsel submitted that a litigant has a duty not to persist with moot litigation, and penalising it with a costs order would discourage litigants from acting responsibly. Counsel's argument is based on the Constitutional Court decision of *Normandien Farms (Pty) Ltd* v *SA Agency for Promotion of Petroleum Exportation and Exploitation (SOC) Ltd*[5], in which it held that persisting with a moot matter constitutes an abuse of process.

[12] Finally, counsel, relying on the matter *De Sousa* v *Technology Corporate Management (Pty) Ltd*[6] submitted that there are no exceptional circumstances demonstrating improper or objectionable conduct to justify a punitive costs order.

Analysis

[13] The general rule is indeed that a withdrawing party must pay the costs of the opposing party[7]. This general rule is not inflexible and has exceptions. In addition to

[4] 2025 JDR 2049 (WCC) para 13.
[5] 2020 (4) SA 409 (CC).
[6] 2017 (5) SA 577 (GJ) at 655C-J.
[7] *ABSA Bank v Robb* 2013 (3) SA 619 (GSJ) at para 8.

these exceptions, the court has a wide discretion allowing it to depart therefrom where there are sound reasons[8]. The onus to show that the general rule should apply rests on the party seeking costs once the withdrawing party has raised a *prima facie* justification for the departure.

[14] The conspectus of the evidence before me demonstrates that the withdrawal was occasioned by the respondent's reinstatement of the Gauteng centre accreditation three days after the application was launched, coupled with the respondent's reasonable belief that reinstatement of all centres would follow. The reasonable belief was, in my view, justified when one has regard to the correspondences and the fact that the original delisting of all centres was explicitly tied to the Gauteng centre earthing issue.[9] The respondent, in my view, correctly deemed the supervening circumstances as rendering the relief sought unnecessary.

[15] The founding affidavit set out a clear complaint, that is, the nationwide delisting based on a single centre's earthing issue, without prior notice or an opportunity to be heard. The applicant's act was procedurally unfair and a violation of Clause 5.4 of the guidelines, which requires the other party to be afforded an opportunity to respond before termination. Consequently, I am of the view that the applicant's contention that the application was questionable *ab initio* is not persuasive because it is not supported by the record.

[16] The applicant's act of *mero mutu* reinstating the Gauteng centre after the application was launched is, in my view, a tacit acknowledgement by the applicant that its position was not unassailable.

[17] The respondent wrote a letter dated 1 September 2025 in which they sought to resolve the costs amicably, but the applicant ignored it. The respondent withdrew the

[8] *In Hammond and Hammond Transactional Law Clinic* v *Bitou Municipality and Others* (8526/21) [2021] ZAWCHC 150 (11 August 2021) at paragraph 16*:*
[9] The applicant's's letter of 19 March 2025, annexure FA8).

application. This conduct, in view, is entirely consistent with the duty articulated in the *Normandien Farms*[10] case and cannot be penalised.

[18] I therefore find that the Applicant failed to prove exceptional circumstances warranting the respondent being mulcted with costs. To find otherwise would be anomalous to allow a party whose conduct necessitated the litigation, and then yielded on the core issue, to recover costs from the party that secured its objective.

[19] It follows that the application falls to be dismissed.

Order

[20] I therefore make the following order:

1. The application is dismissed.

2. Each party bear its own costs in respect of the application.

[redacted]

P J M MOGOTSI

ACTING JUDGE OF THE HIGH COURT

GAUTENG LOCAL DIVISION, JOHANNESBURG

[10] See footnote 5

Appearances

For the Applicant:	Adv Suhail Mohammed suhail@counsel.co.za
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Date heard: 09 February 2026

Date of Judgment: 18 February 2026