

IN THE HIGH COURT OF SOUTH AFRICAGAUTENG DIVISION, JOHANNESBURGCASE NO: 109270/2024DATE: 10.02.2026

DELETE WHICHEVER IS NOT APPLICABLE
 (1) REPORTABLE: NO
 (2) OF INTEREST TO OTHER JUDGES : NO
 (3) REVISED



SIGNATURE

DATE: 10 February 2026

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In the matter between

CONRAD BOTHMA AND OTHERS

Applicants

and

INCREDIMED (PTY) LTD

Respondent

J U D G M E N T E X T E M P O R E

20 **WILSON, J:** The respondent, IncrediMed, approached my brother Strydom J, *ex parte*, for Anton Piller relief against the applicants. Strydom J granted the Anton Piller relief sought. It appears that the execution of the Anton Piller order was botched, in that the Sheriff served a copy of the

order without being accompanied by an IT expert and a supervising attorney, whose presence was necessary to preserve the evidence sought to be procured in the execution of the order.

Upon becoming aware of the Anton Piller proceedings the applicants brought an application to reconsider Strydom J's order. Affidavits were filed but the application was never set down, since IncrediMed decided, for what it called commercial reasons, not to pursue the main action in
10 connection with which the Anton Piller order was procured. It tendered the return of the property seized in the execution of the Anton Piller order.

Given that the main action was not to be pursued, the applicants asked IncrediMed to tender the costs of the Anton Piller proceedings and the reconsideration application. IncrediMed took the view that it need not tender those costs, since, so it said, it was always justified in seeking and obtaining the Anton Piller relief, even though it no longer intended to pursue the main action.

20 Before me the applicants nevertheless seek the costs of the Anton Piller proceedings, the reconsideration application and the costs of today, being the application for costs itself.

Anton Piller relief is an extraordinary invasion of the right to privacy of those who are subject to it. The

extraordinary nature of the relief involves a search being conducted of persons and property, and other potential invasions of privacy, which a court would not usually countenance.

In extraordinary circumstances, a court will grant Anton Piller relief, if the case has been made out that the applicant intends to pursue a specific cause of action, and reasonably believes that evidence vital to make out that cause of action is in possession of the respondent and is in
10 danger of being destroyed or spirited away.

It is critical in an Anton Piller application to assure the court that there is a cause of action to which the evidence sought to be discovered is relevant, and that the cause of action identified will be pursued.

It is only because the potential loss or destruction of the evidence sought to be recovered may amount to a violation of the right of access to court that Anton Piller relief is constitutionally justified. Otherwise, the extremely invasive nature of the relief could not be justified at all.

20 I think it follows from these basic principles that if a litigant secures an Anton Piller order, conducts the search but then decides, after all, not to pursue the action to which the evidence seized was said to be relevant, then that litigant ought to pay the costs of the Anton Piller proceedings themselves.

It is not enough, in my view, that the litigant thought that they were justified in obtaining the Anton Piller order at the time the order was applied for. Because the litigant is not entitled to Anton Piller relief unless it has assured the court that it has a cause of action that it intends to pursue, the very least the litigant would have to do, in order to shield itself from a costs order, would be to actually pursue that cause. IncrediMed chose not to pursue its action. That means it never needed the Anton Piller order in the first
10 place, and that, in hindsight, the Anton Piller order should not have been applied for. IncrediMed must bear the consequences of the unnecessary invasion of the applicants' privacy that it engineered.

The applicants seek an attorney and client costs order. They contend that IncrediMed should have tendered their costs as soon as it decided not to pursue the main action.

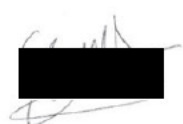
Given the principles that I have set out, that tender plainly should have been made, in that IncrediMed should
20 have realised that the game was up, and that, strictly speaking, there turned out to have been no need to ask for an Anton Piller order in the first place.

In my view, there can be few clearer cases in which a tender for costs should have been made. The failure to make an appropriate tender, together with IncrediMed's

insistence on pushing the costs issue to a hearing, justifies a costs order on the attorney and client scale.

Counsel for IncrediMed argued that that costs order should not include the cost of two counsel, but it seems to me that Anton Piller proceedings, especially Anton Piller proceedings that go awry, are almost always of the complexity that justifies the appointment of two counsel, and I see nothing different about this case.

For these reasons, the first respondent is ordered to
10 pay the costs of the Anton Piller application, the costs of the applicants' interlocutory application for reconsideration, and the costs of today, on the scale as between attorney and client. These costs are to include the costs of two counsel.



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WILSON, J
JUDGE OF THE HIGH COURT
10 February 2026

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