

**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG**

Case No: 077258/2025

DATE: 11-02-2026

DELETE WHICHEVER IS NOT APPLICABLE:

- (1) REPORTABLE: No
- (2) OF INTEREST TO OTHER JUDGES: No
- (3) REVISED: YES (23 March 2026)

RJ Moultrie
.....
SIGNATURE

In the matter between:

**EXOTHERMIC AND RAILWAY
TECHNOLOGY (PTY) LTD**

Applicant / Plaintiff

and

THERMITREX (PTY) LTD

Respondent / Defendant

J U D G M E N T

MOULTRIE, J: This is an application that is interlocutory to an interlocutory application in a matter that commenced as an action. The applicant in the current interlocutory application is the plaintiff in that action.

Amongst other various interlocutory skirmishes that the parties are involved in, in relation to the action, is a Rule 30 application that the defendant launched during August 2025. I will refer to that application in this judgment as “the

Rule 30 application”, despite the fact that at least one other Rule 30 application has been brought in the action.

The Rule 30 application has been met by an answering affidavit, and a replying affidavit has also been filed. The Rule 30 application is thus ripe for enrolment in the ordinary course on the opposed motion court roll.

The relief sought before me is an order declaring that the Rule 30 application is fatally defective and that it is liable to be dismissed. The basis advanced for this relief by Mr Sambane, the director of the applicant who purports to represent it, is the allegation that the defendant in the action is not diligently prosecuting the determination of the Rule 30 application via the opposed motion court roll. Even assuming that this contention is valid, the applicant’s remedy is simply for the applicant to follow the procedure laid down in the practice directives for setting down the Rule 30 application on the opposed motion court roll. The current application is fatally irregular and defective and cannot possibly succeed. Even if it had not been opposed, it falls to be dismissed.

Before proceeding to consider the issue of costs, I note that the applicant is an incorporated company. As such, only an admitted legal practitioner may represent it in court, and the only circumstances under which it may be represented by Mr Sambane as its director would be if he brought a formal application before the Court entitling him to do so. The

reasons for this rule have been canvassed in some of the highest courts in the country. I refer, for example, to the matter of ***Manong and Associates (Pty) Ltd v Minister of Public Works 2010 (2) SA 167 (SCA)*** at paras 3 to 16, in which the Supreme Court of Appeal considered whether this requirement for legal representation of corporations was Constitutionally problematic. The Court found that it was not.

Notwithstanding this, I considered (as my brother Wilson J did in the case of ***Dis-Chem Sunward Park (Pty) Ltd and Another v HG Manola CC 2023 JDR 3792 (GJ)*** at para 9) that it would be rude not to allow Mr Sambane an opportunity to address me. Unfortunately, however, Mr Sambane has abused the indulgence I granted him out of common politeness. Despite having been warned by me at an early stage of the hearing today that this application is fundamentally misconceived (and despite the fact that the respondent's legal representatives have similarly placed him on notice that they consider this application to be misconceived) he has chosen to pursue it. He accepts, expressly, that he does so out of ignorance. But yet he persists, forcefully so – even in the face of gentle and polite prompting from the bench.

The question that I must consider is whether the applicant should be required to pay the costs of the respondent and if so, on what scale. In doing so, I consider

that the following factors are relevant:

Firstly, it appears that this is the second time that the applicant has pursued a similar cause of action, albeit in relation to a different Rule 30 application.

Secondly, although Mr Sambane informs me that he is well-aware of the fact that he has no right or entitlement to represent the applicant, and despite the best offices of this Court (and of the respondent's representatives), he appears to be wilfully insistent on taking up the time of other litigants and seeking to "jump the queue". His complaint that the plaintiff cannot afford to employ a legal representative is irrelevant – precisely because of the fact that it is a corporation. The courts depend upon legal representatives to adequately represent litigants and not waste time. In any event, although a range of different possibilities exists as to how legal representation (or at least advice) may be secured, Mr Sambane does not appear willing to seek out, let alone take, such advice.

In the circumstances, even though I accept that this application is not intentionally vexatious, I do find that it is vexatious in fact – in the sense that the respondent should never have been brought to court to deal with it. A litigant who brings another to court under such circumstances, even out of ignorance and lacking vexatious intention, may be mulcted in costs on a punitive scale (cf. **Re Alluvial Creek**

Ltd 1929 CPD 532 at 535; **Ernst & Young v Beinash 1999 (1) SA 1114 (W)** at 1148B-C). I am of the view that that is the appropriate course to follow in the current circumstances.

I therefore issue the following order:

1. The application is dismissed.
2. The applicant is ordered to pay the respondent's costs on the scale as between attorney and client.

RJ Moultrie
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MOULTRIE, J

JUDGE OF THE HIGH COURT

DATE OF *EX TEMPORE* JUDGMENT: 11 February 2026

DATE REVISED: 23 March 2026

For the Applicant: HJ Sambane

For the Respondent: M Henning instructed by Hoosen
Wadiwala Inc.