



**IN THE HIGH COURT OF SOUTH AFRICA
(NORTHERN CAPE DIVISION, KIMBERLEY)**

Case no: 2625/2024

In the matter between:

OREWAYS MINING SA (PTY)LTD

Applicant

and

MAGOMA ATTORNEYS

First Respondent

FIRST NATIONAL BANK LIMITED

Second Respondent

Heard: 06 March 2026.

Order granted: 06 March 2026.

Reasons requested: 19 March 2026.

Reasons made available: 24 March 2026.

REASONS FOR ORDER

Tyuthuza AJ

Introduction

1. On 6 March 2026, an order was granted in terms of which the application was removed from the roll and the applicant was ordered to pay costs on a party and party on scale B.

2. On 19 March 2026, the first respondent served my office with a request for reasons via-email.
3. What follows are the written reasons.
4. The history of the application shows that on 21 January 2025, the applicant applied for a date for the hearing of the matter on the opposed roll in terms of Rule 6(5) of the Rules.
5. On 24 March 2025, Nxumalo J, granted an order, wherein the first respondent (the applicant in the interlocutory application) was granted leave to file a further affidavit in respect of Part A and B of the main application.
6. On 25 August 2025, the applicant set down the application for hearing on 6 March 2026. The notice of set down was served on the first respondent on 25 August 2025.
7. On 3 March 2026, whilst preparing for the opposed motions to be heard on 6 March 2026, I perused the court file and realised that the papers were over 100 pages and that the parties had not filed any heads of argument, thus I was of the view that the matter was not ripe for hearing and would not proceed on 6 March 2026. On the same day at about 12:00, the first respondent's heads of argument were delivered to my office and according to the stamp thereon, the heads of argument were served on the applicant at 10:45.
8. On 4 March 2026, my office was informed that the papers were not in order and that the matter would not be proceeding and that the applicant would tender the wasted costs. In light thereof, I was of the view that this matter would be removed from the roll alternatively postponed and thus did not read the papers.
9. On 6 March 2026, Ms. Sieberhagen on behalf of the applicant submitted that the matter was not ripe for hearing, in that the applicant had not filed its heads of argument, and that the parties had failed to comply with the practice directives in respect of the time frames for the filing of heads of argument. It was submitted that the applicant ought to have filed its heads of argument on

18 February 2026 and the first respondent on 23 February 2026. Ms. Sieberhagen submitted that the application be removed from the roll and tendered the first respondent's costs on a party and party scale on scale A.

10. Mr. Mongala, counsel for the First Respondent, indicated that no proposal in respect of the costs was made and further submitted that the first respondent did not understand what the postponement was about and as such was opposed to a postponement of the matter. He further submitted that the application ought to be struck from the roll. In his heads of argument Mr. Mongala submits that the matter is not ripe for adjudication on the opposed roll and that the matter if not dismissed, calls to be struck with punitive costs order on attorney and client scale. Mr. Mongala further submitted that the applicant's failure to file its Heads, does not automatically deprive the court from hearing the matter.
11. At the onset, I indicated to counsel that I did not read the papers, as I was under the impression that the matter would not be proceeding in that the heads of argument were not filed and that if the matter was not to be postponed, I would need an opportunity to read the papers. I further indicated that there was non-compliance with the practice directives in that the papers were more than 100 pages. I was of the view that the only issue at this stage between the parties was the costs. I further indicated that the applicant had tendered the costs, thus there would be no prejudice to the first respondent if the matter did not proceed on 6 March 2026. Mr. Mongala insisted that I strike the application off the roll on the basis that the first respondent complied with the practice directives as no papers were filed in respect of Part B of the application, thus the 100 pages was not applicable. I indicated that the court bundle consisted of more than 100 pages and thus I was not inclined to strike the application off the roll without having read the papers.

The practice directives:

12. Rule 4 of Directive 1 of 2024 issued by the Judge President of this Division deals with opposed applications and states that, in respect of each opposed application, heads of arguments shall be filed with the registrar and served on the opposing party before 12:00 on the Friday preceding the trial date or on

behalf of the respondent before 12:00 on the Tuesday preceding the trial date provided that in respect of long or complicated applications the heads of argument shall be filed and served at least 12 and 9 days respectively before the trial date.

13. Part B Rule 6.1.1 of Directive 1 of 2020 issued by the Judge President of this Division states as follows: an application with more than 100 pages (includes annexures to affidavits) is considered to be a long application.
14. It is common cause that this application consisted of 126 pages, thus in terms of the practice directives of this division it is a long application and the heads of argument were to be filed respectively 12 and 9 days prior. The applicant had not complied in that it did not file any heads of argument, whilst the first respondent filed heads of argument, but these heads of argument were not filed in compliance with the practice directives. The first respondent filed its heads of argument on 3 March 2026, two days before the matter was to be heard and the first respondent did not seek condonation for the late filing thereof. As such I am inclined to exercise my discretion as to how the proceedings would be conducted.

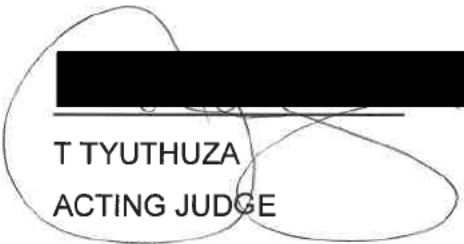
Conclusion

15. The matter was removed from the roll, and I ordered that the applicant pay the costs on party and party scale B. In my view the matter was not ready for adjudication and that counsel for the first respondent conceded to this in his written submissions.
16. It is trite that the removal of a matter from the roll is in all practical respects akin to a postponement *sine die* and once an opposed matter has been set down, unless the parties agree to the removal or postponement of the matter, the matter cannot be unilaterally removed by one party and the discretion on whether a matter should be removed lies with the Judge before who the matter is enrolled. In *Van der Schyff J in Dey Street Properties (Pty) Ltd v Salentias Travel and Hospitality CC t/a Van Hobs Dry Cleaners*¹ it was held that a party cannot unilaterally postpone a matter where the opposing party's consent

¹ Case No 25461/21 dated 15 July 2021 Gauteng Division, Pretoria at para 5.

cannot be obtained. It is the discretion of the court seized with an application for postponement that prevails.

17. In the exercise of my discretion I was not inclined to strike the application off the roll without having considered the whole matter and hearing submissions in respect thereof. Furthermore, in respect of the costs, it is common cause that the court makes an order of attorney and client costs in order to mark its disapproval with the conduct of the losing party.² Considering the fact that I was of the view that the matter would not proceed and that the merits of the application was not before me and not argued before me, I was not satisfied that a punitive costs order was warranted.
18. As such, I exercised my discretion and removed the matter from the roll because, as I alluded to above, it was not ripe for hearing and despite the fact that the first respondent had failed to comply with the aforementioned practice directives, I was inclined to grant costs in the first respondent's favour, as the applicant had tendered the costs.



T TYUTHUZA
ACTING JUDGE
NORTHERN CAPE DIVISION

Appearances

On behalf of the Applicant:
On instructions of:

Adv AS Sieberhagen
Duncan & Rothman Attorneys

On behalf of the First Respondent:
On instructions of:

Adv J Mongala
Magoma Attorneys

²*Public Protector v South African Reserve Bank* 375 2019 (6) SA 253 (CC).