



IN THE HIGH COURT OF SOUTH AFRICA

(GAUTENG DIVISION: PRETORIA)

- (1) REPORTABLE: NO
 (2) OF INTEREST TO OTHER JUDGES: NO
 (3) REVISED

19 March 2026

DATE

SIGNATURE

Case number: 2024-127274

In the matter between:

NELISIWE MHLONGO

Applicant

and

BHEKIZENZO INNOCENT SIMELANE

First Respondent

THE MASTER OF THE HIGH COURT

Second Respondent

JUDGMENT

MINNAAR AJ.

[1] This application came before me in the opposed motion court and was heard virtually on 4 March 2026. The issues revolved around the first respondent's entitlement to inherit from the deceased child's intestate

estate. The applicant brought the application as the duly appointed executrix in the estate of the deceased child. The applicant, in her personal capacity, is the biological mother of the deceased child. The first respondent is the biological father of the deceased child.

[2] The first respondent raised a point *in limine* challenging the applicant's *locus standi*. Having heard both counsel on this point, judgment was reserved.

[3] On 9 March 2026, the applicant delivered a notice of withdrawal of the application and tendered the first respondent's wasted costs occasioned by the application, up to and including 4 March 2026.

[4] It is trite that once a case has been placed before a court for adjudication, the court is obliged to adjudicate upon the issues by rendering a judgment, unless the parties specifically withdraw all or some of the issues from judicial consideration (by, for example, abandoning a claim or defence, or by withdrawing the action or application in its entirety).¹

[5] In terms of the provisions of Rule 41(1), once a matter has been set down for hearing, it is not competent for the party who instituted such proceedings to withdraw them without either the consent of all parties or the leave of the court.²

¹ *Maswanganyi v Road Accident Fund* 2019 (5) SA 407 (SCA) at 411H-412A.

² See also *Bondev Midrand v Madzhie* 2017 (4) SA 166 (GP) at 170E

[6] The applicant failed to seek the consent of all parties or the leave of the court to withdraw her application. The applicant merely delivered a notice by email to the first respondent and my chambers, and uploaded a copy of this email and the notice of withdrawal to Caselines.

[7] I requested my registrar to reach out to the first respondent's attorney to enquire whether the first respondent consents to the contents of the notice of withdrawal. The first respondent's attorney responded on 12 March 2026. Unfortunately, this correspondence was only brought to my attention on 19 March 2026. In terms of the correspondence received from the first respondent's attorney, the first respondent noted, without any objections, the contents of the notice of withdrawal. In this correspondence, reference was made to email correspondence between the respective attorneys, dated 10 and 11 March 2026, in terms of which it was agreed that the tendered costs are costs on the party and party scale, including the costs of counsel on Scale B.

[8] The court has discretion to grant leave to withdraw an application, and the question of injustice to the parties is germane to the exercise of that discretion.³

[9] I pause to mention that, during the argument, the matter stood down for the applicant's counsel to take an instruction. The applicant then requested a postponement of the application to sort out her papers and

³ *Pearson and Hutton NNO v Hitzeroth* 1967 (3) SA 591 (E) at 593D, 594H. *Karoo Meat Exchange Ltd v Mtwazi* 1967 (3) SA 356 (E) at 359B-G; *Huggings v Ryan NO* 1978 (1) SA 216 (R) at 218D.

requested that costs be reserved. The first respondent was not amenable to the proposal for a postponement to fix the applicant's papers with costs to be reserved, and insisted that either the applicant withdraw the application with a tender for costs or, in the absence of such an offer, that the application proceed. The request for a postponement was denied, and I reserved judgment.

[10] It was my *prima facie* view during the hearing, and it remains my view, that the applicant lacked the required *locus standi* to pursue the application in her personal capacity rather than in her capacity as the executrix in the estate of her deceased child. At the very least, the estate of the deceased child should have been joined to these proceedings. The ideal position would be for the applicant to step away from her appointment as executrix and for the second respondent to be approached to appoint an independent executor to wind up the deceased estate. In light of the withdrawal of the application, I do not see any need for this court to expand on the merits of the application. Judicial resources and time are precious and should be utilised accordingly.

[11] The applicant's motivation for withdrawing the application is not something this court needs to investigate. The applicant cannot be forced to proceed with the application.⁴

⁴ *Levy v Levy* 1991 (3) SA 614 (A) at 620B

[12] With the tender for costs, I cannot see any prejudice that the first respondent would suffer should leave to withdraw the application be granted. In the premises, leave is granted to the applicant to withdraw the application.

[13] Consequently, I make the following order:

1. The applicant is granted leave to withdraw the application.
2. The contents of the notice of withdrawal, dated 9 March 2026, are noted. The scale of costs is on the party and party scale, including counsel's fees on Scale B.



Minnaar AJ

Acting Judge of the High Court

Gauteng Division, Pretoria

Heard on	: 4 March 2026
For the applicant	: Adv P Shandu
Instructed by	: Barkers
For the first respondent	: Adv. W E Zulu
Instructed by	: Tivani Attorneys Inc
Date of Judgment	: 19 March 2026