



**IN THE LABOUR COURT OF SOUTH AFRICA
(HELD AT CAPE TOWN)**

NOT REPORTABLE

CASE NO: C04/2024 / C252/2024

In the matter between:

PAUL DUVERGE

Applicant

and

**SPANISH FARM GUEST LODGE CC
t/a SKY VILLA BOUTIQUE HOTEL**

First Respondent

SKY VILLA (PTY) LTD

Second Respondent

Date heard: 13 April 2026

Judgment delivered: 15 April 2025

Summary: Costs ~ a matter of judicial discretion, to be determined by reference to all the relevant circumstances ~ considering inter alia the criteria of law and fairness ~ ordered the respondent to bear fifty percent of the applicant's costs.

JUDGMENT

DANIELS J

Introduction

1. The applicant came to this Court alleging that his retrenchment was unfair, in substance and in procedure. After a lengthy trial, the Court found his dismissal by the second respondent unfair in both respects. Compensation of eight months' pay was granted, but costs were reserved. That question was argued on 13 April 2026. This judgment answers only that.

Submissions

2. Mr Bosch, for the applicant, stated that Legal Wise would cover half his client's costs. The rest fell on the applicant—a layperson, with no union to lean on, and a family to feed. He had no ongoing relationship with the respondent. To deny the applicant costs, Mr Bosch argued, would shut the door to those who come to court in good faith but do so alone.
3. Mr Whittaker, for the second respondent, replied that the applicant had already won much. Respondent's defence was bona fide, not frivolous. The applicant found alternative employment soon after his dismissal, albeit at lower remuneration. According to the respondent, the applicant had enjoyed a discount on a property and R45 000 in rental payments. The respondent had paid for a trial transcript during a long hiatus in the trial. Further, the applicant chose this Court over arbitration, a choice that must count.

Legal principles and analysis

4. In *De Lacy*¹ the Constitutional Court noted that, in respect of costs, all the circumstances must be considered. Costs lie within the discretion of the court, but such discretion must be exercised justly and equitably. Section 162 of the Labour Relations Act No. 66 of 1995 (the LRA) echoes that: costs must follow the law *and* fairness.
5. In *Zungu*² the Constitutional Court endorsed the *Dorkin*³ dictum that costs do not simply follow the result in this court. Instead, the rule is that there is no order of costs unless law and fairness demand it. The Court must walk a narrow path — not discouraging claims but not encouraging frivolous ones either.
6. In *Bester*⁴ the Labour Appeal Court added: when an individual carries her own case, without a union, fairness looks to her burden—her purse, her the needs of her family, and her solitude. This is consistent with the requirement of fairness.
7. Here, the applicant bore half the costs himself. The trial was lengthy and the costs likely significant. Mr Whittaker did not argue that the applicant should have represented himself. While it is correct, as Mr Whittaker submitted, that the applicant found re-employment soon after dismissal, his remuneration in the new position were diminished. That was common cause.
8. While it is correct that the second respondent presented its case in a professional manner, professionalism is the duty of every litigant and legal practitioner. The applicant's team was equally professional.

¹ *De Lacy and Another v South African Post Office* (CCT 24/10) [2011] ZACC 17; 2011 (9) BCLR 905 (CC) (24 May 2011)

² *Zungu v Premier of the Province of KwaZulu-Natal* [2018] ZACC 1; (2018) 39 ILJ 523 (CC); [2018] (6) BCLR 686 (CC) at para 24

³ *Member of the Executive Council for Finance, KwaZulu-Natal v Wentworth Dorkin N.O.* [2007] ZALAC 41 (*Dorkin*) at para 19

⁴ *Bester (Scott) In re: Small Enterprise Finance Agency SOC Ltd v CCMA and Others* (JA41/2018) [2019] ZALAC 73; [2020] 3 BLLR 244 (LAC); (2020) 41 ILJ 877 (LAC) (11 December 2019)

9. It is significant that the applicant won at trial and won on every point. The discount claimed by the respondent and rental payments were not proven and therefore irrelevant.
10. Compensation was granted to the applicant for his wounded dignity and the infringement of his rights. To set costs against such compensation would hollow out his victory - and discourage other individuals from seeking relief from the Court. I therefore accept that fear of legal costs chills the right of access to court. Both *Zungu* and *Bester* warn of this. A winner who pays (costs) effectively still loses.
11. It is true that the applicant could have chosen arbitration – the LRA permits it. Yet arbitration would have brought less finality. Furthermore, this dispute was no simple matter. It warranted judicial scrutiny. On balance, the election to approach the Court was reasonable and should not be held against the applicant.
12. In the result, fairness and law dictates that the respondent must bear the costs but not that which Legal Wise already covers. Fairness also demands that the applicant bear the costs of any monies paid by the respondent to secure transcripts of the evidence at trial and/or the consultation process.

Court Order

13. Following careful consideration, I make the following order:
 1. For the costs of the trial, subject to para two, the second respondent is to pay 50% of the applicant's taxed costs.
 2. The costs of all the transcriptions used in the trial, which were paid for by the second respondent, must be deducted from the taxed costs,

3. The second respondent shall pay the full taxed costs of this hearing on costs.

Reynaud Daniels
Judge of the Labour Court of South Africa

For the Applicant:

Adv Craig Bosch

Instructed by: Africa & Associates

For the Respondent:

Adv Joseph Whitaker

Instructed by: Werksmans Attorneys