



**IN THE HIGH COURT OF SOUTH AFRICA
NORTH WEST DIVISION, MAHIKENG**

Not reportable

Case no:1679/25

In the matter between:

**MEC FOR DEPARTMENT: ECONOMIC
DEVELOPMENT, ENVIRONMENT
CONSERVATION AND TOURISM, NORTH
WEST**

FIRST APPLICANT

**THE CHIEF EXECUTIVE OFFICER:
NORTH WEST PARKS AND TOURISM
BOARD**

SECOND APPLICANT

and

**NATIONAL EDUCATION
HEALTH & ALLIED WORKERS
UNION (NEHAWU)**

FIRST RESPONDENT

**ALL EMPLOYEES OF THE
APPLICANTS WHO ASSOCIATE**

SECOND RESPONDENT

**THEMSELVES WITH THE
UNLAWFUL CONDUCT OF THE FIRST
RESPONDENT AND ITS MEMBERS**

**ANY OTHER PERSON / ENTITY /
WORKERS UNION AND OR
ASSOCIATION WHO ASSOCIATE
THEMSELVES WITH THE
UNLAWFUL CONDUCT OF THE FIRST
AND SECOND RESPONDENTS**

THIRD RESPONDENT

**THE PROVINCIAL COMMISSIONER
OF POLICE NORTH WEST PROVINCE**

FOURTH RESPONDENT

Coram: Wessels AJ

Heard: 17 April 2026

Delivered: This judgment was handed down electronically, circulated to the parties' representatives via email, uploaded to CaseLines, and released to SAFLII. The date and time for the handing down of the judgment are deemed to be 16h00 on 7 May 2026.

Summary: Labour dispute – return date of rule nisi – applicants failed to appear, file replying affidavit, or file heads of argument – application abandoned – whether costs should be awarded on attorney-and-client scale – threshold for punitive costs order not met – rule nisi discharged, application dismissed with costs on party-and-party scale

JUDGMENT

Wessels AJ

Introduction

[1] This matter came before me on the return date of a rule nisi granted by Reid J on 4 April 2025 and subsequently extended by Masike AJ on 24 October 2025. When the matter was postponed for hearing to 24 October 2025, the applicants were represented. The rule nisi called upon the respondents to show cause why the applicants' interim interdictory relief should not be confirmed.

[2] The applicants did not appear before me at the hearing. No replying affidavit was filed, no heads of argument were delivered, and no communication was received from their legal representatives. Only the first respondent appeared before this Court, represented by counsel.

Proceedings before this Court

[3] First respondent's counsel informed this Court of the following. Counsel previously briefed by the applicants, Adv Scholtz, informed the Court (through the first respondent's counsel) that he had not received instructions to appear. The applicants' instructing attorneys had evidently not responded to any communications from the first respondent's attorneys regarding whether the applicants intended to proceed. The matter had previously served on the opposed roll. After the first respondent opposed it, the rule nisi was extended to the present date as the return date. The first respondent sought an order discharging

the rule nisi, dismissing the application, and granting costs against the applicants on a punitive scale (attorney and client costs).

[4] The applicants have, in effect, abandoned their application. They filed no replying affidavit in response to the first respondent's comprehensive answering affidavit, which raised numerous points in limine, including defective identification of the applicants, lack of locus standi of the second applicant, non-joinder, absence of urgency, *res judicata*, and the unenforceability of the relief sought. The applicants furthermore filed no heads of argument and as already alluded to, did not appear on the return date.

[5] In these circumstances, the applicants have failed to make out any case for the confirmation of the rule nisi. The rule nisi must accordingly be discharged and the application dismissed.

Scale of costs

[6] The sole issue requiring elaboration is the first respondent's prayer for a costs order on the attorney-and-client scale.

[7] The general rule is that costs follow the result, and a successful litigant is entitled to costs on the ordinary party-and-party scale. Party-and-party costs are those costs that appear to the taxing master to have been necessary or proper for the attainment of justice or for defending the rights of any party, while attorney-and-client costs are more punitive. They entitle the successful party to recover from the unsuccessful party all costs due to its attorney¹. In *ABSA Bank Ltd*

¹ See Herbstein & Van Winsen *The Civil Practice of the High Courts and the Supreme Court of Appeal of South Africa* 5th ed Chapter 36 Part II.

*(Volkskas Bank Division) v SJ Du Toit & Sons Earthmovers (Pty) Ltd*², it was held that such an award is designed to discourage unnecessary or unjustified litigation. The same principle applies generally in that a punitive costs order is justified only where a party has acted vexatiously, recklessly, dishonestly, or in bad faith, or has put the other side to unnecessary trouble and expense that ought not to be borne by it.

[8] The first respondent submits that such an order is warranted because the application was defective from the outset, lacked urgency, was brought without candour, and was effectively abandoned. In any event, I decline to revisit the question of urgency. That point was dealt with at an earlier stage and cannot be reopened on the return date. While I accept that the applicants' conduct has been unsatisfactory in that they failed to file a replying affidavit, failed to deliver heads of argument, and failed to appear, I am not persuaded that the threshold for a punitive costs order has been reached.

[9] The deficiencies in the applicants' case are largely procedural and substantive. There is no indication that the applicants acted with the intention of harassing or causing unnecessary expense. The underlying labour dispute between the parties appeared genuine, and previous court orders had been granted in favour of the applicants, albeit on an interim basis. Although ultimately unsuccessful, the present application was not so unfounded as to constitute an abuse of the court process.

[10] In these circumstances, the appropriate order is costs on the ordinary party-and-party scale. The first respondent has succeeded and is entitled to its costs, but not on the punitive scale.

² *ABSA Bank Ltd (Volkskas Bank Division) v SJ Du Toit & Sons Earthmovers (Pty) Ltd* 1995 (3) SA 265 (C) 268 A-D.

[11] As the matter is not of an intricate nature and does not raise any novel legal issues, costs should be awarded on no higher scale than Scale A.

Order

[12] In the result, the following order is made:

1. The rule nisi issued on 4 April 2025 and extended on 24 October 2025 is hereby discharged and the application is dismissed.
2. The applicants shall pay the first respondent's costs of this application on the party-and-party scale (Scale A).
3. There is no order as to costs in respect of the second, third and fourth respondents.

M WESSELS
ACTING JUDGE OF THE HIGH COURT
NORTH WEST DIVISION, MAHIKENG

Appearances

For the applicants:	No appearance
	Mosire Tsiane Attorneys

c/o Kgomo Attorneys

Mahikeng

For the first respondent:

Adv O Ntsamai

Instructed by:

Schöltz Attorneys

p/a Mokhetle Attorneys Inc

Mahikeng