

IN THE HIGH COURT OF SOUTH AFRICAGAUTENG DIVISION, JOHANNESBURGCASE NO: 128800/2025DATE: 21-05-2026

DELETE WHICHEVER IS NOT APPLICABLE
 (1) REPORTABLE: NO
 (2) OF INTEREST TO OTHER JUDGES : NO
 (3) REVISED



SIGNATURE

21 May 2026

In the matter between

10 MOMENTUM METROPOLITAN LIFE LIMITED Applicant
 and
 STEPHANUS KLOPPERS AND ANOTHER Respondents

J U D G M E N T E X T E M P O R E

WILSON, J: The merits of this application have been settled, but I would be forgiven for thinking, given the volume of argument that has been directed at me, that they have not. This application is, in fact, an application that
 20 concerns only costs at this stage. Momentum, the applicant, approached me on a notice of motion which, at its core, seeks the return of confidential information that came into the first respondent's possession when he was one of Momentum's employees.

It seems clear on the papers that Mr Kloppers, the first respondent, took some of that confidential information

with him after he was dismissed by Momentum. Mr. Kloppers used it to compete for clients with Momentum, at least in the provision of brokerage services. That this is the core of Momentum's case is clear on any reasonable construction of the papers. The fact that neither of the respondents has any defence to the claim for the return of the confidential information is equally clear.

When this matter was first called before me two days ago, I made counsel aware that this was my *prima facie* view and, since then, a draft order has been agreed between the parties, which provides essentially for the return of defined confidential information to which Momentum is entitled. Now the only issue that the parties disagree on is costs.

Mr Heher, who appeared for Momentum, sought costs on the attorney and client scale, relying on a provision of Mr. Kloppers' employment agreement with Momentum and as well as what he submitted was the second respondent's participation in what Mr. Heher characterised as Mr. Kloppers' disreputable and dishonest conduct. Attorney and client costs orders are only really appropriate when there has been some misconduct in the context of litigation. It is important for a court not to make costs orders on the basis that they consider the litigants before them to be good or

bad people. What matters is how the parties have behaved during the litigation process.

I see nothing that the respondents have done during that process that would rise to the kind of misconduct that would justify an attorney and client costs order. Nor, given the parties' obvious inequality of bargaining power, am I generally inclined to enforce an agreement to pay costs reached in the context of an employment contract.

Moreover, I am not inclined to award an attorney and
10 client costs order because, in my view, the relief sought in Momentum's notice of motion ranges substantially wider than the relief that is justified on the allegations and evidence in the founding affidavit. This was perhaps the only good point of substance Mr Goosen, who appeared for Mr. Kloppers, raised in his argument, but he sought to press it much further than it can go. Even though the notice of motion goes beyond what the founding affidavit supports, the core of the relief sought, on any reasonable interpretation, was the return of the confidential information
20 and an interdict against its use. That is what the applicant has been successful in negotiating out of the respondents. It is what I would have granted had the case been committed to me on its merits.

Momentum was forced to approach the court. The application was opposed fiercely right up until the beginning

of the hearing before me. On that basis alone, Momentum is entitled to its party and party costs reasonably incurred by the necessity of bringing the application.

For all of those reasons, I shall endorse the agreed order handed up and prepared very helpfully by counsel today, at the end of which I have written in manuscript the following costs order:

10 “The respondents are directed jointly and severally, the one paying the other to be absolved, to pay the costs of this application, including the costs of counsel, which may be taxed on scale “B”. Those costs will include the costs reserved on 4 November 2025.”

I have so amended the order, which is now signed, dated and marked X.



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WILSON, J
JUDGE OF THE HIGH COURT
21 May 2026

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