REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG

Case Number: 42996/2020

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

[redacted] 28/05/2026

SIGNATURE DATE:

In the matter between:

ASSUMPTION CONVENT SCHOOL 1st Applicant

THE MISSIONARY SISTERS OF THE ASSUMPTION 2nd Applicant

and

MR PLASTIC CC 1st Respondent

MR PLASTIC PROPERTIES CC 2nd Respondent

EKURHULENI MUNICIPALITY 3rd Respondent

JUDGMENT

Mfenyana J:

Introduction

[1] This application concerns the determination of costs arising from various applications brought by the applicants against the respondents.

[2] It is common cause that the applications have become moot. Notwithstanding this, the first and second applicants ("*the applicants / the School*") contend that they are entitled to costs because the applications were necessitated by the conduct of the first and second respondents ("*Mr Plastic*"). They further contend that, as they operate a small private school, they lacked the funds to litigate and that the costs of litigation caused them significant prejudice.

[3] The first and second respondents (*"Mr Plastic"*), on the other hand, aver that the applicants are not entitled to costs and that Mr Plastic is instead entitled to the costs of all the applications, including this application, as there was no basis for the School to institute all the proceedings that it did.

[4] The third respondent's ("*the Municipality*") position is that the School has not made out a case for an award of costs against the Municipality in all matters involving the School, and that each party should bear its own costs.

Factual matrix

[5] The applicants operate a private school within the jurisdiction of the Municipality. The school is situated on property adjoining the second respondent's property, where Mr Plastic conducts its business.

[6] On 10 December 2020, the School filed an application to interdict Mr Plastic from conducting unlawful manufacturing activities at the respondents' premises and from using the premises in a manner contrary to the zoning determined by the Municipality. The School also sought an order directing the respondents to enforce the zoning of the premises and prevent any use contrary to it. ("*the main application"*)

[7] It further sought costs against all the respondents, jointly and severally, on an attorney-and-client scale.

[8] All three respondents opposed the application.

[9] Following the main application, the School brought further applications, which I address only insofar as they are relevant to costs.

Main application

[10] The School averred that the main application was precipitated by Mr Plastic's illegal activities on the premises, contrary to its zoning. It further contends that before resorting to litigation, it sent numerous letters to the respondents, invited them to a roundtable meeting, and made several other attempts to avoid litigation. These efforts commenced in July 2016 and continued into the following year, including requests that Mr Plastic cease manufacturing illegal products on the premises, which Mr Plastic ignored.

[11] The School further alleged that chemicals were being emitted into the atmosphere and that odours from Mr Plastic's premises were so severe that learners and teachers at times struggled to breathe and had to evacuate the sports grounds. They complained that odours and noise pollution emanating from the premises were harmful to the health of learners, teachers, and workers at the school, as well as people at a nearby church and other businesses in the area.

[12] Mr Plastic denied that any manufacturing activities were taking place on the premises. However, in November 2017, the second respondent applied for the rezoning of the premises from Business 2 to Industrial 2. The School objected to the application, *inter alia*, on the basis that Mr Plastic had not been transparent in its application, as it had been manufacturing products on the premises for years, and that its activities required Industrial 2 zoning.

[13] The application was served on the respondents on 27 January 2021. On 10 and 17 February 2021, Mr Plastic and the Municipality, respectively, opposed the application. By agreement between the parties, the time for the filing of the answering affidavits was extended to 8 March 2021 for Mr Plastic and 19 March 2021 for the Municipality.

[14] On 10 March 2021, Mr Plastic had not delivered its answering affidavit. It instead delivered an application seeking condonation for the late filing thereof, coupled with a request for a further extension until 20 April 2021.

[15] On 26 March 2021, the Municipality filed a similar application, seeking an extension until 25 April 2021. It is common cause that neither application was ever set down and, as a result, neither was heard.

[16] The answering affidavits were ultimately delivered on 28 April 2021 for the Municipality and on 5 May 2021 for Mr Plastic. Mr Plastic's answering

affidavit also included a further application for condonation for the late filing of that affidavit.

[17] In its answering affidavit, Mr Plastic contends that it had been granted special consent use by the Municipality to use the premises for 'light industry' activities. It attached a copy of an approval, ostensibly granted by the Municipality on 24 July 2007, together with a zoning certificate dated 2 March 2021. Mr Plastic further avers that the zoning certificate relied on by the School is outdated and inoperative. It, however, denies that any manufacturing was taking place on the premises.

[18] By contrast, the Municipality's answer is that it was not aware that in 2007 it had granted Mr Plastic special consent use to conduct light industry activities, and only learnt of this when Mr Plastic filed its application for condonation on 10 March 2021, to which it attached a zoning certificate and approval for special consent use.

[19] The Municipality also noted that Mr Plastic appears to have been unaware that it had applied for and had been granted temporary special consent to conduct light industry activities, given its 2017 application to rezone the premises from Business 2 to Industrial 2. The Municipality, therefore, questions how Mr Plastic discovered in March 2021 that the special consent use had been approved.

[20] Notably, the Municipality asserted that it had no record of Mr Plastic having applied for special consent use, and had initiated an investigation into the authenticity of the approval and zoning certificate provided by Mr Plastic. However, the investigation was not finalised as the area manager who had purportedly approved the application had left the Municipality's employ and could not be reached.

[21] Despite these queries and the Municipality's pending investigation, in the same answering affidavit, it relied on the documents provided by Mr Plastic to argue that there was no basis for the interdict sought by the School and no indication that Mr Plastic was using the premises contrary to its zoning. It further averred that a report from its environmental unit, following a site inspection on 28 February 2021, also found that there were no such breaches.

Application for a stay of the main application, and Review application

[22] On 24 June 2021, the School addressed a letter to the respondents seeking their consent to put the main application in abeyance as it intended to file a review application. In the letter, the School stated that the review application was necessitated by the Municipality's acceptance of the special consent use alleged by Mr Plastic.

[23] Mr Plastic did not consent to the stay of the main application as it considered the main application, and consequently the intended review, to be without merit. It therefore requested the School to withdraw the application and tender the wasted costs.

[24] The Municipality neither refused nor granted consent to the School.

[25] On 12 August 2021, the School delivered an application for a stay of the main application pending the finalisation of a review application it intended to institute, seeking to set aside the Municipality's decision to grant special consent use to Mr Plastic, alternatively, to amend its records to reflect that special consent.

[26] The School contended that, given that administrative decisions of the Municipality are valid until set aside, it would be futile to file a reply and

proceed with the main application until there was certainty regarding the zoning of the premises. They further contended that the main application would only be ripe for hearing once a review court had pronounced on the issue. If the review application were to be unsuccessful, the main application would be doomed. If it were to succeed, the applicants would still be required to file a supplementary affidavit, dealing with the outcome of the review.

[27] It essentially averred that the special consent use and the related rezoning certificate were forgeries, rendering any decision to grant them procedurally unfair and reviewable. In the alternative, it contended that the stipulated conditions had not been met, that the special consent use granted in 2007 had lapsed years earlier, and that the Municipality's reliance thereon was therefore reviewable.

[28] The remainder of the School's founding affidavit essentially deals with the grounds for review. It is averred that, despite repeated correspondence from the School, Mr Plastic made no mention of any special consent use until it filed its answering affidavit. The School thus contends that Mr Plastic could not have applied for rezoning in 2017 while knowing that it had an unresolved special consent use application and failed to enquire about its outcome. Accordingly, the School alleges that the purported 2007 approval is a forgery intended to frustrate the main application and that it caused the Municipality to amend its records, leading to the zoning certificate reflecting special consent use for 'light industry' activities.

[29] The stay and review applications were opposed by Mr Plastic. The Municipality did not oppose the stay and filed a 'notice to abide' in the review application.

[30] The essence of the opposition by Mr Plastic is that a stay of proceedings should be granted sparingly and in exceptional circumstances,

counterbalanced with a respondent's right to achieve litigation finality. Importantly, Mr Plastic contended that there was no point in staying an application which could not retrospectively be revived.

[31] It is common cause that on 26 April 2023, an order was granted by agreement between the parties, for a stay of the main application pending finalisation of the review application. Costs were reserved. The applicants contend that these should be awarded to them.

[32] The review application was issued on 13 August 2021.

[33] On 24 March 2022, Mr Plastic filed their answering affidavit in the review application, together with a counter-application. In the counterapplication, Mr Plastic sought an order compelling the Municipality to convert the zoning of the premises on the basis that they had been incorrectly commuted. This was denied by the Municipality, which maintained that the special consent use was fraudulently obtained.

[34] The rezoning application was approved by the Municipality on 27 June 2023, subject to certain stipulated conditions. The School lodged an appeal against that decision, which was dismissed by the Municipality, subject to further conditions.

[35] The applicants contend that they elected not to review the decision of the Municipality, as Mr Plastic subsequently implemented various measures to lower the noise and redirect gas emissions from the applicants' property to the southern side of the second respondent's property. It is on this basis that the parties agree that the main application and the review have been rendered academic and overtaken by events.

[36] The 'Mr Plastic' respondents aver that they had already warned the School in 2022 that approval of the rezoning application would render the

applications moot and that none of the applications was ripe for hearing. As matters stand, they contend that none of the applications has any practical effect for any of the parties and that the interests of justice do not require the matter to be heard.

[37] Because the determination of costs would require the court to engage with the merits of each application, together with the grounds of opposition, Mr Plastic argues that this would unnecessarily burden this court in circumstances where the applications are academic.

[38] Essentially, Mr Plastic argues that although courts retain a discretion to determine a matter despite its mootness, where the interests of justice so require, they should not hear cases that have no practical effect for any of the parties and present no live controversy. It further argues that the School has failed to demonstrate why the matter should be heard.

[39] Regarding the merits of the applications, Mr Plastic contends that the main application was based on an outdated zoning certificate dated 4 September 2016 and alleged contraventions thereof, which had no merit as it had been granted special consent use by the Municipality. It further contends that it had to incur expenses in appointing experts to rebut the applicants' contentions relating to air and noise pollution. These reports show that operations on the premises were within acceptable norms. The main application was therefore bound to fail, Mr Plastic further avers.

[40] Regarding the stay application, Mr Plastic avers that this application was inconsequential as the School conceded that the court would largely be interested in the results of the review application.

[41] Consistent with its position in the main application, Mr Plastic contends that the review application was founded on an incorrect zoning certificate and

on historic zoning rights arising under the Germiston Town Planning Scheme. On this basis as well, the review application was doomed to fail.

[42] Mr Plastic further avers that the issues of air and noise pollution were duly considered by the Municipality's Tribunal and found to be without merit. He further contends that there are disputes of fact arising from this issue which are incapable of resolution in motion proceedings. Mr Plastic thus seeks a punitive costs order on the attorney-client scale against the School, on the basis that the applications were unnecessary and that the School's conduct was unreasonable and obtuse.

[43] The Municipality argues that the discretion of the court to award costs is not engaged, as there is no successful party in these proceedings. It further argues that although Mr Plastic was in breach of the town planning bylaws after the School filed a complaint in 2017, Mr Plastic subsequently rectified the situation by applying for rezoning. The Municipality decided that it would be unreasonable to take action against Mr Plastic while the application was pending.

[44] According to the Municipality, the School should have waited for the outcome of the rezoning application instead of filing the main application. It is worth noting that the rezoning application was finalised in 2023. The School's appeal was dismissed.

[45] Notably, in its heads of argument, the Municipality submits that the special consent use only surfaced when Mr Plastic filed its application for extension of time. It further states that "this is a matter that is receiving attention from the City". This shows that the Municipality did not just sit and do nothing, further goes the argument.

[46] In the same breath, the Municipality submits that the special consent use that Mr Plastic received from the Municipality came as a surprise to both the

School and the Municipality. It further concedes that the 2016 zoning certificate relied on by the School in the main application was obtained from the Municipality.

[47] It is common cause that the Municipality did not oppose the stay application and that it filed a notice to abide by the decision of the court in the review application. In its response to the request for the record, the Municipality stated that there was no record of an application by Mr Plastic and that the special consent use number allocated in the approval letter relates to a different property and not the premises for which it was issued. There were also inconsistencies in the purported approval letter, and this forms part of the reasons why the Municipality concluded that the approval letter was not issued by the Municipality. An investigation conducted by the Municipality also revealed that Mr Plastic never applied for special consent use and that the special consent use was obtained fraudulently. On this basis, it elected not to oppose the review application, and to demonstrate its bona fides, opposed Mr Plastic's counterapplication.

[48] The Municipality denies that it ignored the School's efforts to prevent litigation, stating that the 2016 complaint was investigated and the School was informed of the outcome. When the School filed a second complaint in August 2017, it assured the School that it would take action against Mr Plastic should they be found to have contravened the town planning bylaws. However, in November 2017, Mr Plastic filed a rezoning application, and the Municipality stayed the decision to take action against Mr Plastic, pending the outcome of the application.

[49] The Municipality avers that it acted reasonably and rationally in the circumstances, as the special consent use purportedly issued to Mr Plastic remained in force until set aside.

[50] The Municipality thus submits that it does not seek costs against the School and that it would be just and equitable for each party to pay its own costs, and that in the dispute between the Municipality and Mr Plastic (the counterapplication), each party should similarly pay its own costs.

Discussion

[51] The purpose of a costs order is to indemnify the successful party for costs incurred in instituting or defending an action. The court has a discretion in awarding costs, which must be exercised judicially, with due regard to fairness, reasonableness, the circumstances relevant to costs, and the parties' conduct. A successful party is generally entitled to its costs, and success is determined by substance rather than form.

[52] Where the conduct of a litigant is found to be vexatious, in bad faith and amounts to an abuse of the process of the court, punitive costs serve to punish such conduct and show the court's displeasure with that litigant. The rationale for this scale of costs is that the successful party should not be out of pocket for defending its rights.

[53] Where a matter has become moot, courts will generally refrain from determining the substantive issues, including costs. However, if the interests of justice so require, a court may still determine costs. In doing so, it will consider the reasons the matter became moot and who was responsible, whether the application was reasonable when instituted, the parties' overall conduct, and broader considerations of fairness and efficiency. Notwithstanding, costs incurred before the matter became moot remain recoverable.

[54] The applicants aver that Mr Plastic's conduct, including its opposition to the applications, was spurious and duplicitous, necessitating a punitive costs order. They further aver that the conduct of Mr Plastic and the Municipality

rendered the main, stay, and review applications moot, and that the litigation could have been avoided had Mr Plastic engaged with the School from the outset instead of persisting in its 'illegal conduct', and had the Municipality complied with its obligations.

[55] They add that had the Municipality not elected to rely on the fraudulent special consent use document, neither the review application nor the stay application would have been necessary, and that this conduct precipitated each of the applications they instituted. Similarly, the costs incurred could have been avoided. They further argue that, although Mr Plastic contends that the School relied on an outdated zoning certificate, Mr Plastic chose to ignore all correspondence and the School's attempts to engage and avoid litigation, despite its assertion that they were in possession of an updated zoning certificate. The Municipality adopted a similar stance.

[56] Mr Plastic, on the other hand, while conceding that all the applications have become moot, argues that the reasons why the applications became moot are:

56.1 that Mr Plastic had already lodged a rezoning application before the School issued the main application. The rezoning was approved on 23 June 2023.

56.2 that the School's internal appeal against the rezoning was dismissed.

56.3 that, in light of the approved rezoning, the relief sought in all the applications cannot be granted, as doing so would be academic.

[57] This is also the argument advanced by the Municipality, that there was no point in instituting the main application when the rezoning application was already pending.

Main application

[58] Although the application has become moot due to the granting of rezoning, the applicant was justified in approaching the court when the main application was instituted. Mr Plastic was conducting activities in contravention of the applicable town planning bylaws, a fact confirmed by the Municipality.

[59] It does not matter, in my view, that when the main application was instituted, Mr Plastic had already filed its rezoning application to rezone the premises from Business to Industrial. At that point, the applicant had made several attempts to resolve the dispute without litigation. In the circumstances, fairness dictates that Mr Plastic pays the applicant's costs.

[60] In *Biowatch*[1], the Constitutional Court noted that costs are not determined mechanically: courts must consider fairness, the conduct of the parties and the broader interests of justice, including conduct before and during the proceedings. Although *Biowatch* concerned constitutional litigation and the underlying principles relating to cost orders in such circumstances, its principles are equally relevant in the present case, particularly in view of the fact that it took the School several years to approach the court after numerous failed attempts to resolve the issue.

[61] Despite finding, in response to the School's 2017 complaint, that Mr Plastic had contravened the bylaws, the Municipality took no action against Mr Plastic. When it elected to oppose the application, it had no knowledge of the existence of the special consent use, and the rezoning certificate produced by Mr Plastic. It stated as much in its answering affidavit, stating further that it had commenced with investigations. To date, the Municipality maintains that the documents relied on by Mr Plastic did not originate from

[1] *Biowatch Trust v Registrar Genetic Resources* [2009] ZACC 14; 2009 (6) SA 232 (CC).

the Municipality and that they were fraudulently obtained, and this conclusion emanates from the investigation conducted.

[62] Armed with such findings, it was incumbent upon the Municipality to take the necessary steps to have the purported special consent use set aside. This would obviate any confusion and the litigation which later ensued. The Municipality failed to do this, arguably, because Mr Plastic subsequently filed a rezoning application to remedy the situation. This does not help the situation either for Mr Plastic or the Municipality.

[63] The question is, why was it necessary for Mr Plastic to apply for rezoning in 2017 when it contends that it had a special consent use granted by the Municipality in 2007 and a rezoning certificate which permitted it to conduct industrial activities on the premises? Similarly, why was it necessary for the Municipality to even consider a second rezoning application when one was already in existence? Why was it necessary for the Municipality to conduct an investigation in the first place, when all it needed to do was simply produce the special consent?

[64] As the lawful administrative authority, the Municipality is empowered to determine the zoning status or rezoning of the property. If it had granted the special consent and issued the rezoning certificate, it ought to be aware of that fact. To this day, it maintains that it did not do so, yet it has taken no further action in relation to the continued existence of the alleged special consent. Its failure to deal with the School's complaint decisively and timeously amounts to a dereliction of its responsibilities.

[65] In my view, the 2017 rezoning application amounts to a concession by Mr Plastic that the premises were not zoned for the purpose they were being used for and that it required Industrial 2 zoning in order to conduct industrial activities.

[66] It is also disconcerting that, although Mr Plastic stated in its correspondence to the School that the proceedings instituted by the School should not proceed as it was awaiting the outcome of its 2017 rezoning application, this position is not reflected in its answering affidavit. Instead, the reason advanced for opposing the main application is that Mr Plastic was authorised to conduct industrial activities on the premises by virtue of the 2007 special consent use and the March 2021 zoning certificate. However, Mr Plastic cannot both approbate and reprobate.

[67] The Municipality's reliance on *Oudekraal*[2] and *Kirland*[3] does not assist the Municipality for the following reasons:

a. An organ of state cannot simply ignore its own decision upon realising that a mistake was made or that it was taken unlawfully. It should apply to a court to have the decision set aside.
b. In this case, this is precisely what the Municipality has done.

c. The decision taken by the erstwhile official of the Municipality remains in existence.

[68] The conduct of both the Municipality and Mr Plastic renders it improbable that Mr Plastic would choose not to rely on the special consent it alleges was granted by the Municipality and instead go to the trouble of applying for rezoning when, on its own version, the property had already been rezoned for that very purpose. Even more perplexing is that the Municipality would simply disregard its own decision and proceed to process a further rezoning application in respect of the same property without setting aside the initial

[2] *Oudekraal Estates v City of Cape Town* and others [2004] ZASCA 48; [2004] 3 All SA 1 (SCA); 2004 (6) SA 222 (SCA).
[3] *MEC for Health, Eastern Cape v Kirland Investments (Pty) Ltd* [2014] ZACC 6; 2014 (5) BCLR 547 (CC); 2014 (3) SA 481 (CC).

decision. By its own account, that decision, however it was made, remains in effect.

[69] Although the substantive disputes between the parties have become moot, considerations of justice and fairness dictate that both the Municipality and Mr Plastic should bear the costs of the main application.

Stay application

[70] The stay application was issued on 12 August 2021, following the School's notices in terms of Rule 35(12) to produce specified documents. The Municipality delivered its response to the notice on 17 June 2021. The School contends that, upon realising that the Municipality had decided to accept the purported approval of the special consent use, it was compelled to issue the stay application while proceeding with the review proceedings.

[71] The Municipality did not oppose the application. Mr Plastic initially opposed the application but withdrew its opposition on the day of the hearing.

[72] An order was issued by agreement between the parties, granting the stay and reserving the costs.

[73] The School avers that the belated withdrawal by Mr Plastic was occasioned by the Municipality's confirmation in a letter dated 11 October 2021, stating that the documents relied on by Mr Plastic were not issued by the Municipality. Until then, Mr Plastic had strenuously opposed the application.

[74] It is worth stating that in the said letter, the Municipality further assailed the process allegedly followed in obtaining the special consent use, further stating that a special consent use is not the appropriate application for light industry activities. Notably, the Municipality noted numerous discrepancies

in the documents relied on by Mr Plastic, particularly that the special consent use number in Mr Plastic's document relates to a different property.

[75] There can be no doubt in the circumstances that the stay application and the review application were triggered by the conduct of Mr Plastic and the Municipality. I deal with the review application below. For purposes of the stay application, it is worth restating that the Municipality did not oppose the application.

[76] Mr Plastic's opposition was vexatious and unreasonable in the circumstances, in light of the pending review. Moreover, Mr Plastic's withdrawal of its opposition at the very last minute, when faced with the prospect of the hearing, leads to the inference that the opposition was in bad faith, or without merit, and made purely as a tactical manoeuvre.

[77] It follows that Mr Plastic should be held liable for the reserved costs of the stay application.

Review application

[78] In the review application, the School contends that it was compelled to seek a review of the special consent if found to be valid; alternatively, the decision of the Municipality to rely on it and to amend its records to reflect such. This came after the Municipality expressed its discontent with Mr Plastic, agreeing with the School that the special consent documents were fraudulent. It is, therefore, mind-boggling that the Municipality adopted a supine stance and elected to remain a bystander while the review application sought to challenge a decision which it has consistently maintained did not emanate from it, and which it continues to assail to this day.

[79] As the lawful authority, it was incumbent upon the Municipality, once it realised that the purported special consent use was questionable, to institute proceedings to have the unlawful decision and/or document set aside. It could have also entered the fray and supported the application, rather than merely abiding by the court's decision in a matter where it held all the cards to clarify the status of the documents and decisions taken. This would not only assist the court, but it is also a constitutional duty imposed on the municipality as a holder of public power, particularly having stated under oath that Mr Plastic's documents and submissions left much to be desired.

[80] To make matters worse, Mr Plastic filed a counterapplication which had nothing to do with the School, as it sought an order compelling the Municipality to convert the zoning of the premises on the basis that they had allegedly been incorrectly commuted. Again, this is directly at odds with the zoning certificate it relied on, dated 2 March 2021. If this was anything to go by, there was no need for either a conversion or rezoning application.

[81] In all these applications, there is no basis for suggesting, as the respondents do, that the School was the cause of its misfortune. When the main application was instituted, the School could not have foreseen that the Municipality would later rely on the very decision it had attacked in that application. Neither can it be suggested that the School ought to have proceeded with the main application while the validity of the special consent remained unresolved, and while Mr Plastic continued to violate the town planning bylaws as determined by the Municipality. The stay and the review applications were likewise necessitated by the conduct of both the Municipality and Mr Plastic. As such, nothing becomes of Mr Plastic's Rule 34(1) tender for each party to pay its costs. The applicants' refusal was reasonable in the circumstances.

[82] In awarding costs, it bears mentioning that a municipality has a much higher responsibility than a private litigant. This is not difficult to understand: a municipality is not merely a litigant defending private interests, but exercises public power and administers public resources.[4] It is bound by the Constitutional injunctions which underpin this higher level of responsibility, including ss 41, 152, 195 and 237. If it fails in discharging its responsibilities in the manner described, such failure is not only procedural but also constitutional.

[83] The Municipality's role is not negligible. In failing to enforce its legal obligations, it not only enabled Mr Plastic to carry on with its activities unhindered, but also significantly contributed to the trajectory of litigation in this case.

[84] As regards the scale of costs, there seems to be no plausible reason why Mr Plastic so strenuously opposed all the applications. Its conduct, throughout the course of litigation, was nothing short of vexatious. The conduct of the Municipality was self-defeating and demonstrably inconsistent with its constitutional obligations. It follows that a punitive costs order on the scale between attorney and client would be appropriate.

Order

[85] Accordingly, I make the following order:

a. The first and second respondents are liable for 40% of the applicants' costs of the main application on the scale between attorney and client.

---

[4] *Black Sash Trust v Minister of Social Development and Others (Freedom Under Law NPC Intervening)* [2017] ZACC 8; 2017 (5) BCLR 543 (CC); 2017 (3) SA 335 (CC); see also: *Allpay Consolidated Investment Holdings (Pty) Ltd and Others v Chief Executive Officer of the South African Social Security Agency and Others* (CCT 48/13) [2013] ZACC 42; 2014 (1) SA 604 (CC); 2014 (1) BCLR 1 (CC).

b. The third respondent is liable for 60% of the applicants' costs in respect of the main application on the scale between attorney and client.

c. The first and second respondents shall pay the reserved costs of 26 April 2023, in respect of the stay application on the scale between attorney and client.

d. The first and second respondents are liable for 40% of the applicants' costs in respect of the review application, including the counterapplication, on the scale between attorney and client.

e. The third respondent is liable for 60% of the applicants' costs in respect of the review application, including the counterapplication, on the scale between attorney and client.

f. The first and second respondents shall pay 40% of the applicants' costs in respect of this application on the scale between attorney and client.

g. The third respondent shall pay 60% of the applicants' costs in respect of this application on the scale between attorney and client.

[redacted]

S MFENYANA

Judge of the High Court

Date heard: 3 November 2025
Date of judgment: 28 May 2026

This judgment was handed down electronically by circulation to the parties' representatives by email and by uploading the judgment onto Caselines. The date of delivery of the judgment is deemed to be 28 May 2026.

Appearances

For the applicants:
Counsel: G Young Benson
Instructed by P.S. Geddes Attorneys

For the 1st and 2nd respondents
Counsel: R. du Plessis
Instructed by Cronje Attorneys Inc.

For the 3rd respondent
Counsel: K Monareng
Instructed by Kunene Ramapala Inc.