



**IN THE HIGH COURT OF SOUTH AFRICA,
GAUTENG DIVISION, PRETORIA**

CASE NO: 78017/2017

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

6/05/2026
DATE

[REDACTED]
SIGNATURE

In the matter of

JOHANNA JOCOBA MULLER

APPLICANT

And

EKURHULENI METROPOLITAN MUNICIPALITY

RESPONDANT

JUDGMENT

MAKAMU J

Introduction

This is an application for costs on a punitive scale after parties agreed that the matter be removed from the roll on application by the Defendant pending their application for rescission of the judgment granted on 18 October 2018.

[1] In the Constitutional court case of ***Shaynaz Prithilal and Akani Egoli (Pty) Limited and Tsogo Sun Gaming Limited¹***, Rogers J said the following:

“The judicial power to order costs requires the court to exercise a discretion”.

[2] The Respondent/ Plaintiff in the main case argued that they have no qualms with the matter being removed from the roll and the Applicant/ Defendant tendering costs, but the fact that they came with the request on an eleventh hour, they deserve to be awarded costs on a punitive scale of Attorney and Client scale C.

[3] The Respondent/Plaintiff in the main case further argued that they were served with the documents by the Applicant/Defendant only shortly before the court commenced on the day of trial, and that the affidavit was not even signed by the deponent.

[4] Had the Applicant served the Respondent timeously, they would not have prepared themselves to come to court for trial, as they would not even have opposed the removal of the case from the roll.

[5] The Applicant submitted that it is a well-known fact that the Ekurhuleni Metropolitan Municipality is under scrutiny by the Madlanga Commission regarding its administration, and that many senior officials are either suspended or arrested, so it was not possible to obtain officials in authority to assist the current lawyers in drafting and signing documents.

¹ Prithilal v Akani Egoli (Pty) Ltd and Another [2025] ZACC 5, para 8.

[6] The official who was finally appointed to act was only appointed on 4 of May 2026, and the fact that the documents were signed very late is a testimony to the difficulties that the applicant is facing.

[7] Adv. Mudimeli for Ekurhuleni, the applicant/defendant, submitted that the City of Ekurhuleni decided to review all litigation matters in which the settlement was reached by their erstwhile attorney without consulting the Municipality, and that this matter is one of those cases.

[8] He submitted further that the Ekurhuleni made few discoveries in their own investigations that revealed that there was no actual incident or accident reported on the date the Plaintiff/ Respondent alleged that it happened and the injuries alleged to have been sustained some were even much older complaints of knee injury which in any case was supposed to have been replaced few years before the alleged incident on advice of the medical doctors who attended to the Plaintiff/Respondent as such even though the agreement was reached in 2018 they need to rescind it and go for trial.

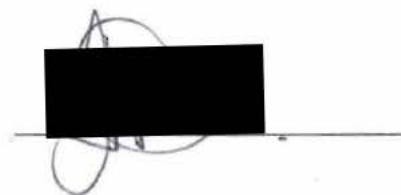
[9] In South African civil Law, punitive costs are commonly awarded on an attorney-and-client scale when a court seeks to express displeasure with a litigant's conduct, rather than merely compensating the unsuccessful party for necessary expenses. While the general rule is that costs are awarded on a "party and party" scale, punitive costs are reserved for exceptional cases where a party has acted in an unethical, frivolous, or abusive manner.

[10] This is not a case where the court feels that the applicant is a vexatious litigant who seeks to waste time and abuse the system; however, the explanation offered is persuasive enough, without the court having to pronounce on the actual outcome of the litigation itself.

Order

I hereby make the following order;

1. The matter is removed from the roll by consent of both parties.
2. The applicant tendered costs on party and party, scale B and it is so granted.



M S MAKAMU

JUDGE OF THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

Appearance on behalf of the Applicant

Adv Jane Stroebel

Appearance on behalf of the Respondent

Adv Oscar Mudimeli
