

**HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION, PRETORIA)**

Case No:89061/2019

In the matter between:

MW t/a MAKWELA ATTORNEYS

1ST APPLICANT

KHOTSA MAKWELA & ASSOCIATES

2ND APPLICANT

RUSSEL BRENT OE BEER

3RD APPLICANT

CHANE STEYN

4TH APPLICANT

and

**THE NATIONAL DIRECTOR OF PUBLIC
PROSECUTIONS**

RESPONDENT

REASONS FOR ORDER

LUKHAIMANE AJ

1 This is a rescission application brought by the Applicants for the rescission of a preservation order obtained by the Respondent against the bank accounts of the applicants.

2 It is the Applicants' case that the preservation order has lapsed and therefore the forfeiture application is late.

3 The Respondent opposes the application, set the matter down, requesting the court to grant the following order:

3.1 The Rescission application brought by the Applicant in the matter is hereby dismissed.

3.2 The preservation order dated 11 February 2020 is hereby revived.

3.3 A Forfeiture order is granted in terms of Section 53 of POCA in relation to the following property:

3.3.1 The positive balance and all interest accrued in account number 6[...], which account is held in the name of Russel Brent De Beer t/a BMCC Brits at FirstRand Bank Limited, and

3.3.2 An amount of R489 300 in account number 6[...] which account is held in the name of M W t/a Makwela Attorneys Trust at FirstRand Bank Limited

3.3.3 An amount of R300 000 in account number 6[...] which account is held in the name of Khotso Makwela and Associates at FirstRand Bank Limited

3.3.4 The positive balance and all interest accrued in account number 1[...], which account is held in the name of Chane Steyn at Capitec Bank.

3.4 In terms of Section 56 (2) ownership of the property shall vest in the State from the effective date of this order.

3.5 Subject to paragraph 5 below, the funds shall remain in the custody of the respective banks which must thereafter transfer or deposit the positive amount and interest accrued in the bank accounts, into the Criminal Assets Recovery Account established in terms of section 63 of the Act (account number 8[...]) held at the South African Reserve Bank, Vermeulen Street, Pretoria.

3.6 *Any person whose interest in the funds concerned is affected by the forfeiture order may within 20 days after he or she acquired such knowledge of the order, set the matter down for variation or rescission by the Court.*

3.7 *The Applicant to pay the wasted costs of this application on scale C.*

3.8 *Further and or alternative relief.*

4. The matter was removed from the roll and wasted costs on a punitive scale granted against the respondent for the day. The reasons for the costs order follow.

5. A cost order is granted by the court to assign legal expenses incurred in a matter to one or other party. Typically, these are awarded following the action, allowing the successful party to recover its costs. However, during litigation, costs may be awarded to one party due to a misstep by the other party to reimburse their costs irrespective of whether they would be successful in the matter in the end.

6. The general principles of costs are well established.¹ The purpose being to indemnify a successful party who has incurred expenses in instituting or defending an action. In *Mancisco and Sons CC (In Liquidation) v Stone*² Flemming DJP put it as follows:

*The award of costs rest upon the object of reimbursing a person for costs to which he was wrongly put. That underlies the basic principle that a successful party should get its costs.*³

7. Ordinarily, the Practice Manual of the Gauteng Local Division of the High Court of South Africa⁴ expects that an applicant in Motion proceedings would ensure that the record is complete, with the respondent being responsible for the answering affidavit and its Annexures. However, in this instance, it was the Respondent that moved to have

¹ See DE Van Loggerenberg *Erasmus Superior Court Practice* Volume 2: Uniform Rules and Appendices, Part 05 "Costs in General", for an overview of the law of costs.

² 2001(1) SA 168 (W).

³ At 181 F.

⁴ Effective February 2018

the matter set down and from Counsel's submissions, they were unaware of all the papers filed by the Applicants; and therefore, proceeded to set a matter down with reference to incorrect documents.

8. In this instance, the respondent enrolled the matter on the Opposed Motion Roll and served the notice of set down on the applicants. However, the Respondent failed to ensure that the entire record was uploaded on Caselines. Fatal to the matter proceeding on the day, the Respondent had not noted the Notice of Withdrawal of motion dated 9 June 2022 of the Notice of Motion dated 1 October 2020. Further, the Respondent failed to upload the amended Notice of Motion dated 28 June 2022 and served on them on 5 July 2022. This meant that the court could not proceed as the Respondent had failed to ensure that the correct record is uploaded on Caselines, nor was it clear as to which Notice of Motion the Respondents had prepared their papers in reference to.

9. The party setting the matter down for hearing is responsible for ensuring that the entire record is available to the court. Not only was valuable court time lost due to this lapse, but the Applicants also incurred costs for the day owing to the Respondent's lapse. The Applicants are therefore entitled to their wasted costs for the day as requested.

10. To make matters worse, Counsel for the Respondent could not offer any explanation for this lapse, in fact, he was unaware that the record was incomplete. The Applicants proceeded to upload the rest of the record on the day.

11. In awarding costs, a court has a discretion which should be exercised judicially, considering the circumstances of each case, weighing the issues in the case, the conduct of the parties and any other circumstance which may have a bearing on the issue of costs and then make such order as would be fair and just between the parties.⁵ Guidance may of course be found in comparable cases, however they do not create binding principles as that would amount to curtailing the court's powers.

⁵ *Fripp v Gibbon & Co* 1913 AD 354 at 363.

12. Considering the circumstances in this matter, it was prudent for the court to exercise its discretion and order that the Respondent be liable for the wasted costs occasioned by its failure to ensure that the record is complete. The matter was removed from the roll.

MA LUKHAIMANE
Acting Judge of the High Court
Gauteng Division, Pretoria

Date of hearing : 21 April 2026

Reasons Provided : 11 May 2026

Appearances:

For the Applicants : Makwela Attorneys

For the Respondent : Adv D L Phahlane, instructed by the State Attorney, Pretoria