IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

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

13 MAY 2026	SM MARITZ AJ
DATE	SIGNATURE

CASE NO: 2025-037238

In the matter between:

IT MASTER (PTY) LTD Applicant
(Registration Number: 2015/443454/07)

and

NATIONAL EDUCATION GROUP HOLDINGS (PTY) LTD First Respondent
(Registration Number: 2015/244986/07)

BHEKIZIZWE GROUP HOLDINGS (PTY) LTD Second Respondent
(Registration Number: 2017/030749/07)

***EX TEMPORE* JUDGMENT**

MARITZ AJ

A. INTRODUCTION

[1] This judgment was delivered *ex tempore* on 13 May 2026. The Applicant subsequently requested reasons, as it is entitled to do. A court that has delivered an *ex tempore* judgment is entitled to supplement and elaborate upon the reasons given at the time of delivery, provided that the substance of the judgment and the order made are not altered: *S v Wells 1990 (1) SA 816 (A)*; *Firestone SA (Pty) Ltd v Genticuro AG* 1977 (4) SA 298 (A) at 304A-B. The order granted on 13 May 2026 remains unchanged. What follows is a supplemented version of the reasons, which elaborates and clarifies the reasoning without altering the substance of the judgment as delivered.

B. BACKGROUND

[2] This matter came before the Court on 13 May 2026 on the Applicant's application for leave to withdraw the application in terms of Rule 41 of the Uniform Rules of Court. The application that was sought to be withdrawn was an opposed application to compel, in which the Applicant sought to compel the Respondents to furnish nine categories of employee-related documentation arising from a tri-party Student Education Agreement concluded on 1 October 2019. Accordingly, the Court will only deal with the application for leave to withdraw the application and the issue of costs.

[3] The commercial context is important and provides the backdrop against which the withdrawal and the associated costs dispute must be understood. The tri-party Agreement was concluded for the implementation of an Employment Tax Incentive Act 26 of 2013 ('ETI Act') training programme. Under the Agreement, the roles of the parties were allocated as follows: the Applicant was the employer and funder of the programme; the First Respondent was the manager responsible for administering the payroll, loading learners onto the system, and channelling the Applicant's payments to the Second Respondent; and the Second Respondent was the educator, responsible for 100% of the training delivery. Critically, the Second Respondent was also the originating source of all the compliance documentation generated under the programme — including enrolment forms, attendance registers, SETA quarterly assessments, service agreements, unemployment declarations, and related records.

[4] In May 2023, SARS notified the Applicant that it had been selected for a PAYE and ETI audit covering the tax years March 2018 to February 2022. The audit revealed that

a substantial portion of the supporting material required by SARS resided with the Respondents. Despite repeated written demands from November 2024 onwards, complete and compliant documentation was not forthcoming. On 30 January 2025, SARS issued audit findings reflecting a preliminary tax liability of approximately R6 million against the Applicant. On 31 January 2025, SARS issued a Notice of Finalisation of Audit. The Applicant's Tax Compliance Status was revoked.

[5] The application to compel was launched by Notice of Motion on 17 March 2025. The First Respondent filed its answering affidavit on 7 May 2025. The Second Respondent filed its opposing affidavit on 29 May 2025. The Applicant thereafter brought a condonation application for the late filing of its replying affidavit, which was delivered only on 11 March 2026 — some eight months after it fell due.

[6] When the matter was called on 13 May 2026, the Applicant's Counsel informed the Court that the Applicant sought to withdraw the application. The Applicant tendered the Respondents' costs, but only up to the date of filing of their respective answering affidavits — being 7 May 2025 in respect of the First Respondent and 29 May 2025 in respect of the Second Respondent. Both Respondents opposed the limited tender and sought their full costs, including the costs of the condonation application, on the attorney-and-client scale.

C. WITHDRAWAL AND THE APPLICABLE LEGAL PRINCIPLES

[7] The law governing the withdrawal of proceedings is settled. Once an opposing affidavit has been filed, a party may not unilaterally withdraw without the consent of the other parties or the leave of the court: Rule 41(1) of the Uniform Rules of Court. A court will not, however, compel a litigant to proceed with litigation against its will — the commentary to Rule 41 confirms this, and the principle is well established in practice. See: *Levy v Levy 1991 (3) SA 614 (A) at 620B*. Leave to withdraw is accordingly granted.

[8] The withdrawal does not, however, extinguish the Respondents' entitlement to their wasted costs. The general rule is that a withdrawing party bears the costs of the other party by reason of the withdrawal: *Germishuys v Douglas Besproeiingsraad 1973 (3) SA 299 (N)*. The dispute before me is therefore not whether the Respondents

are entitled to costs, but rather the scale of those costs and the extent of the costs to be awarded.

[9] The Applicant's tender — limited to costs incurred up to the dates of the respective answering affidavits — is not acceptable. The withdrawal was effected on 13 May 2026, on the eve of the hearing. By that stage, both Respondents had incurred the full costs of the litigation, including the costs of the condonation application, the briefing of Counsel, the preparation of heads of argument, and attendance at the hearing. A tender that limits the Respondents' costs to the date of their answering affidavits would leave them uncompensated for the most substantial portion of their costs — those incurred in preparation for and attendance at the hearing itself. The tender is accordingly rejected.

D. COSTS: THE FIRST RESPONDENT

[10] Insofar as the First Respondent is concerned, the Court is satisfied that the party-and-party scale is appropriate. The application against the First Respondent was not without foundation. The First Respondent was the manager under the tri-party Agreement and was primarily responsible for administering and making available to the Applicant the documentation generated by the Second Respondent. It was the natural and obvious primary target of the application to compel.

[11] The First Respondent's own conduct contributed to the necessity for the litigation. Its response to the Applicant's November 2024 demands acknowledged possession of documentation for the period October 2019 to July 2020 only, and it failed to comply with the demand letter of 23 December 2024 or with the extended deadline of 17 January 2025. Furthermore, the First Respondent's defence — that it provided the Applicant with all documents in its possession but could not provide certain categories because the Second Respondent had failed to furnish them — was internally contradictory with the Second Respondent's version and gave the Applicant reasonable grounds to persist with the application.

[12] In addition, the Court notes that it was the First Respondent itself that previously launched an application under Case No. 2022-058222 to compel the Second Respondent to produce the very same documentation — and thereafter withdrew that application with a tender of the Second Respondent's wasted costs. The First

Respondent's current assertion that the application against it lacked merit from inception sits uncomfortably with its own prior conduct in seeking to compel the same documentation from the Second Respondent.

[13] Attorney-and-client costs are reserved for cases where the conduct of the paying party has been unreasonable, vexatious or dishonest. The Applicant's conduct in bringing and maintaining the application against the First Respondent was not unreasonable, vexatious or in bad faith. The application was commercially justified, grounded in a legitimate contractual and statutory entitlement, and supported by a SARS audit finding of approximately R6 million. The attorney-and-client scale is accordingly not warranted in respect of the First Respondent.

E. COSTS: THE SECOND RESPONDENT

[14] The position of the Second Respondent requires more careful consideration. The Second Respondent seeks costs on the attorney-and-client scale. However, on a proper analysis of the facts and the law, the Court is not persuaded that the Second Respondent is entitled to that higher scale. The Court's reasons are as follows:

The Second Respondent as originating source of the documentation

[15] The Second Respondent was the educator under the tri-party Agreement and the originating source of all the documentation sought. Every record required by the Applicant — the enrolment forms, attendance registers, SETA quarterly assessments, service agreements, unemployment declarations and related compliance documents — was generated by the Second Respondent in the performance of its obligations under the Agreement. It was not a peripheral party dragged into proceedings in which it had no real interest. It was the party that created the documentation and bore the primary obligation to ensure that documentation was complete and compliant.

[16] The Second Respondent cannot simultaneously accept payment for services rendered under an ETI programme and disclaim all responsibility for the documentary consequences of those services. Having been remunerated for training 450 learners under an ETI-compliant programme, it cannot escape accountability for the adequacy of the records it generated in the implementation of that programme.

The statutory retention obligation and the critical dates

[17] Three dates are critical to the analysis. The tri-party Agreement commenced on 1 October 2019. The application to compel was launched on 17 March 2025. There is, however, a material dispute on the papers as to when the Second Respondent's contractual engagement ended: the Second Respondent contends that the First Respondent terminated its contract with effect from 31 July 2020; the Applicant maintains that the Agreement remained in force until 28 February 2022. This contradiction between the parties has not been resolved on the papers and is noted as a matter of significance.

[18] Section 29 of the Tax Administration Act 28 of 2011 ('the TAA') imposes a statutory obligation on any person required to maintain records under a tax Act to retain those records for a minimum period of five years from the date of submission of the relevant tax return or from the end of the relevant tax period. This obligation exists irrespective of any contractual arrangement and irrespective of the termination of any agreement between the parties.

[19] On the Second Respondent's own version — termination on 31 July 2020 — the five-year statutory retention period ran until at least 31 July 2025. The application was launched on 17 March 2025, some four and a half months before that period would have expired. The Second Respondent was accordingly under an active and unexpired statutory obligation to retain the relevant records on the date the application was served upon it. On the Applicant's version — termination on 28 February 2022 — the retention obligation runs until at least 28 February 2027 and subsists to this day. On either version, the Second Respondent's assertion that it retains no copies of the documentation is not merely a contractual position — it is a statement of non-compliance with a statutory obligation.

[20] The unresolved contradiction as to the duration of the Second Respondent's engagement is itself a matter that militates against the award of punitive costs in its favour. If the engagement in fact continued until February 2022, as the Applicant contends, then the Second Respondent generated and was responsible for a significantly larger body of documentation than it has acknowledged. If, on the other hand, its engagement ended in July 2020, it remained under a statutory obligation to retain the records it had generated for a further five years — a period that had not

expired when the application was launched. The Second Respondent cannot find shelter in either version.

The SARS audit findings and the deficiencies in the documentation

[21] The SARS Finalisation of Audit findings and the Applicant's reconciliation schedule confirmed specific and material deficiencies in the documentation ultimately furnished to the Applicant. SARS found, *inter alia*, that no employer-employee relationship could be established from the documents provided; that ETI was claimed in respect of individuals who did not receive qualifying remuneration; that leave records were absent; that proof of work performed was not provided; and that proof of qualifications obtained was not provided. These deficiencies are directly traceable to the Second Respondent as the originating source of the documentation. They are records the Second Respondent was responsible for generating, maintaining and furnishing under the tri-party Agreement.

[22] The Second Respondent therefore bears a degree of responsibility for the predicament that gave rise to the application in the first place. An application to compel production of documentation of which the Second Respondent was the originating source, and which the SARS audit confirmed to be materially deficient, was not unreasonable, vexatious or without foundation.

Conclusion on the appropriate scale

[23] The award of attorney-and-client costs is a mark of the court's disapproval of the conduct of the paying party and is reserved for cases of genuine unreasonableness or bad faith. A court should be slow to award punitive costs in favour of a party that itself bears contributory responsibility for the very predicament that gave rise to the litigation. The Second Respondent was the originating source of the documentation, bore a statutory retention obligation that had not expired when the application was launched, and is responsible for the documentary deficiencies identified by SARS. In these circumstances, the application against the Second Respondent, while ultimately unsustainable as a matter to be prosecuted to completion, was not the product of bad faith or vexation on the part of the Applicant. The attorney-and-client scale is accordingly not warranted.

[24] The appropriate order in respect of the Second Respondent is party-and-party costs, but with the costs of Counsel on Scale B. This reflects the more active nature of the Second Respondent's opposition — which included a full opposing affidavit, a practice note, heads of argument, and the briefing of Counsel — while stopping short of the punitive scale that the Second Respondent's own contributory conduct does not merit.

[25] In addition, the Court considered the condonation application of the Applicant in determining the appropriate costs order. The eight-month delay was substantial, inadequately explained in material respects, and caused unnecessary inconvenience to the Respondents. It follows, that the costs of the condonation application are accordingly awarded in favour of the Respondents.

F. ORDER

In the result the following order is made:

1. The Applicant is granted leave to withdraw the application.

2. The Applicant is directed to pay the First Respondent's costs of the application including the costs of the condonation application on the party and party scale, including costs of Counsel on scale B.

3. The Applicant is directed to pay the Second Respondent's costs of the application including the costs of the condonation application on the party and party scale, including costs of Counsel on scale B.

4. The costs orders in paragraphs 2 and 3 are separate and independent, the one not affecting the other.

BY ORDER

[redacted]

SM MARITZ AJ
ACTING JUDGE OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

APPEARANCES FOR PARTIES:

Attorneys for Applicant:	S Steyn Inc
Counsel for Applicant:	Adv L Strydom
Attorneys for First Respondent:	Morné Coetzee Attorneys
Counsel for First Respondent:	Adv J Eastes
Attorneys for Second Respondent:	Loubser Van Wyk Inc
Counsel for Second Respondent:	Adv Lubbe

Date of Hearing:	13 May 2026
Date of *Ex Tempore* Judgment:	13 May 2026
Date of providing written copy of *Ex Tempore* Judgment:	21 May 2026