



**IN THE HIGH COURT OF SOUTH AFRICA
FREE STATE DIVISION, BLOEMFONTEIN**

Not reportable

Case no: A57/2025

In the matter between

**FIRST RAND BANK LIMITED t/a FIRST NATIONAL
BANK**

APPELLANT

and

**PHILIPPUS JOHANNES JACOBUS CRONJE
ADOLF JOHANNES DU BRUYN NO
PHILIPPUS JOHANNES JACOBUS CRONJE NO
CECILE CRONJE NO
ANDRIES GUSTAV LE GRANGE NO**

**FIRST RESPONDENT
SECOND RESPONDENT
THIRD RESPONDENT
FOURTH RESPONDENT
FIFTH RESPONDENT**

(In their capacity as trustees of the PC Trust IT780/2011

**DIE CRONJE SEUNS BOERDERY CC
HENDRIK BERNARDUS CRONJE NO
HESTER CRONJE NO**

**SIXTH RESPONDENT
SEVENTH RESPONDENT
EIGHTH RESPONDENT**

(In their capacity as trustees of the Hendrik Cronje
Family Trust IT2254/2001)

Neutral citation: *First Rand Bank Ltd t/a First National Bank v Cronje and Others*
(A57/2025) [2026] ZAFSHC 303 (26 May 2026)

Coram: MHLAMBI ADJP *et* DAFFUE *et* GREYLING-COETZER JJ

Heard: 23 January 2026

Delivered: This judgment was handed down electronically by circulation to the

parties' representatives by email and released to SAFLII. The date and time for hand-down is deemed to be 11h00 on 26 May 2026.

Summary: Appeal of cost order – court may not venture beyond what has been pleaded – appeal upheld.

ORDER

1 The appeal succeeds.

2 The order of the court a quo is set aside and substituted with the following order: 'The respondents, jointly and severally, the one paying the other to be absolved, are ordered to pay the plaintiff's costs arising from the postponement up to and including 21 November 2024, including the costs consequent upon the employment of two counsel on Scale C.'

3 The respondents, jointly and severally, the one paying the other to be absolved, are ordered to pay the costs of appeal (including the costs relevant to the application for leave to appeal), which shall include the costs consequent upon the employment of two counsel on scale C.

JUDGMENT

Mhlambi ADJP (Daffue and Greyling-Coetzer JJ concurring)

[1] In this appeal, the only issue for adjudication is whether the court a quo erred in granting an order that the appellant pay the costs of the application for postponement on an attorney-and-client scale. The costs order reads as follows:

1. The trial proceedings are postponed to 13, 14, 16, 20, 21 and 23 May 2025.

2. The respondent in this application, who is the plaintiff, is ordered to pay the costs of the application for postponement on the attorney and client scale.

3. The applicants in this application, who are the defendants, are ordered jointly and severally, the one paying the other to be absolved, to pay the wasted costs occasioned by the postponement of the trial on the attorney and client scale, including the costs consequent upon the employment of two counsel.'

[2] The appeal is with leave of the court a quo. The record reveals that in the application for leave to appeal, the appellant's counsel pointed out that the defendants, in their notice of motion for a postponement of the trial proceedings, never sought a punitive order of costs against the plaintiff in the event of the plaintiff opposing the application to postpone the trial. The defendants sought only an order for costs if the

plaintiff opposed the application for a postponement. In addition, he referred to a transcription of the submissions made at the hearing of the application to postpone, in which the defendants' counsel conceded that it was reasonable for the plaintiff to have opposed the application for postponement up to 21 November 2024.

[3] The record further reveals that the defendants' counsel submitted that (referring to the plaintiff), '[T]hey are within their right to oppose it.' The plaintiff's counsel submitted that, in the premises, there was no dispute between the parties that the application for postponement was reasonable until a few days before commencement of the trial proceedings, and there was furthermore no dispute that the defendants had not sought a punitive costs order in the event of opposition.

[4] The appellant's counsel submitted in this Court that the court *a quo* ought to have directed the respondents to pay the appellant's costs, including the costs occasioned by the opposition to the postponement application. This submission was based on the respondents' concession that the appellant's opposition was reasonable until 21 November 2024, as well as the fact that not a single jurisdictional requirement was met to enable the court to exercise its discretion to grant the postponement.

[5] Relying on *Cuninghame and Another v First Ready Development 249*,¹ the appellant's counsel contended that a court is entitled to base its judgment and make findings only in relation to matters that fairly flow from the record, the judgment, the heads of argument, or the oral arguments of the respective parties, particularly when oral argument is supplementary to the written argument submitted on behalf of a party.² It is for the parties, either in the pleadings or affidavits, to set out and define the nature of their dispute, and for the Court to determine that dispute and that dispute alone.³

[6] In granting leave to appeal, the court *a quo* stated that a failure to exercise judicial discretion would usually constitute an exceptional circumstance. Because a judicial officer in civil proceedings must resolve the dispute on the issues raised between the parties, the court *a quo* was of the view that it could reasonably be argued that the court had not exercised judicial discretion when it based the punitive costs order on facts which were not in dispute between the parties.

¹ *Cuninghame and Another v First Ready Development 249* [2010] ZASCA 120; 2010 (5) SA 325 (SCA) para 29.

² *Thompson v South African Broadcasting Corporation* 2001 (3) SA 746 (SCA) para 7.

³ *Fischer and Another v Ramahlele and Others* [2014] ZASCA 88; 2014 (4) SA 614 (SCA) paras 13 and 14.

[7] In light of the above, the reasonableness of the appellant's opposition was not in dispute, and the court a quo was required to determine the application within the bounds of the issues defined by the parties. A court decides the case presented and does not introduce or determine issues not traversed in the pleadings, affidavits or argument. Where a matter is common cause, it does not constitute a live issue for adjudication.

[8] The court a quo found that the respondents failed to establish any of the jurisdictional requirements for a postponement, including an adequate explanation for the lateness of the application, the absence of prejudice to the opposing party, or prospects of success in relation to the underlying cause. The respondents sought an indulgence, and absent a proper evidential basis, the appellant was entitled to oppose the application. The respondents' counsel's concession underscores this conclusion.

[9] In awarding punitive costs against the appellant in the postponement application, the court a quo stated that the appellant had proposed that the hearing of the application to compel further and better particulars be held a mere five days before the commencement of the trial proceedings. In such circumstances, the court a quo held the insistence that the trial proceed on 26 November 2024 was, no doubt, unreasonable and illogical.

[10] In light of these considerations, the court a quo's finding that the appellant's opposition was unreasonable and the resulting punitive costs order cannot be supported. The court a quo erred by venturing into territory not placed in dispute and by imposing a costs burden not sought by the respondents. The proper exercise of the court's discretion ought to have resulted in an order directing the respondents, who sought the indulgence, to bear the costs of the postponement application up to 21 November 2024.

Order

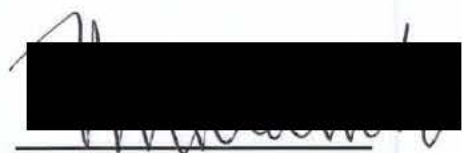
[11] In the result, I order as follows:

1 The appeal succeeds.

2 The order of the Court a quo is set aside and substituted with the following order:

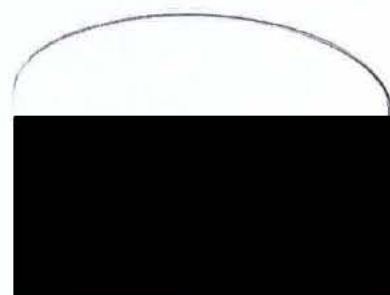
'The respondents, jointly and severally, the one paying the other to be absolved, are ordered to pay the plaintiff's costs arising from the postponement up to and including 21 November 2024, including the costs consequent upon the employment of two counsel on Scale C.'

3 The respondents, jointly and severally, the one paying the other to be absolved, are ordered to pay the costs of appeal (including the costs relevant to the application for leave to appeal), which shall include the cost consequent upon the employment of two counsel on scale C.



J J MHLAMBI
JUDGE OF THE HIGH COURT

I concur.



JP DAFFUE
JUDGE OF THE HIGH COURT

I concur.



D GREYLING-COETZER
JUDGE OF THE HIGH COURT

Appearances

For the Appellant:

KW Luderitz SC & S Tsangarakis

Instructed by:

Symington De Kok

For the Respondent:

CLH Harms

Instructed by:

EG Cooper Majiedt Inc