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

Not reportable

Case no: 6370/2022

In the matter between:

AFM OF SA VILLIERS **APPLICANT**

and

ERNST REDELINGHUYS **RESPONDENT**

In re:

ERNST REDELINGHUYS **PLAINTIFF**

and

CHRIS LE ROUX **FIRST DEFENDANT**
SANDRA VAN DER NEST N O **SECOND DEFENDANT**
SANDRA VAN DER NEST **THIRD DEFENDANT**
AFM OF SA; VILLIERS **FOURTH DEFENDANT**

Neutral citation: *AFM of SA Villiers v Redelinghuys* (6370/2022) [2026] ZAFSHC 317 (28 May 2026)
Coram: MAJOSI AJ
Heard: 04 December 2025
Delivered: 28 May 2026

Summary: Rule 41(1)*(c)* of Uniform Rules of Court – application for upliftment of bar rendered academic by opposing affidavit – wasted costs of the application granted in favour of the applicant.

ORDER

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1 The respondent shall pay the wasted costs of the interlocutory application on a party and party scale.

JUDGMENT

Majosi AJ

[1] The applicant herein originally sought an interlocutory order for the upliftment of a notice of bar in the main action, wherein it is the fourth defendant. This application was opposed. The applicant now seeks an order for costs in terms of rule 41(1)*(c)* of the Uniform Rules of Court after, the respondent, in the main action seemingly withdrew action proceedings. The respondent herein is also opposed to this relief sought.

[2] The applicant is a church and public benefit organisation duly constituted church assembly with a legal personality and perpetual succession in terms of the Apostolic Faith Mission (AFM) of South Africa Constitution, operating in Villiers, Free State, with members in the Republic of South Africa. The respondent is a Pastor with the applicant.

[3] A brief background is as follows. The respondent, after being dismissed by the applicant instituted various courses of action namely, he referred his unfair dismissal to the Commission for Conciliation, Mediation and Arbitration (the CCMA) and when mediation failed, for arbitration. Whilst this was pending, he caused summons to be issued in Villiers Magistrate Court under case number 06/2021 for unpaid salaries for period December 2019 to June 2020 in the amount of R 162 000.00, the action was defended. On 28 May 2021, the CCMA ordered that the respondent be reinstated with backpay of R 286 000.00. The governing body which had operated in the respondent's absence was disbanded and a new one was constituted with the respondent as its chairperson. Through this structure, it authorised the withdrawal of the applicant's defence in the Magistrate Court with a resolution passed in July 2021.

[4] This body also consented to judgment on behalf of the applicant and filed same in November 2021. Judgment was granted and a writ of execution was issued and re-issued on 26 February 2026 as the debt remained unsatisfied. Four immovable properties were attached but not sold in execution. They were however later sold and the proceeds of the sales were paid over to the respondent's attorneys. Another action was instituted by the respondent in the Magistrate Court under case number 10/2024 for unpaid salaries for the period November 2022 to February 2024, which contained 16 claims in the very same summons. More on this aspect later.

[5] The respondent also caused summons to be issued in the Free State High Court under case number 6370/2022 for damages for defamation and loss of income. This action was defended by the first and fourth defendants but the attorneys who filed same withdrew as attorney of record in the main action. A notice of bar was filed and served on the applicant herein. The new firm of attorneys a filed an appearance on behalf of the applicant. The applicant filed a plea and alleged that the matter is *res judicata* in light of the favorable CCMA award in the respondents favor and with the sale in execution of immovable properties which enriched the respondent by an amount of R 2, 5 million, funds which was paid over to the respondent's attorney.

[6] After receiving correspondence that a notice of bar had been served on the fourth defendant which they were unaware of, correspondence was directed at the respondent's attorneys requesting consent to the upliftment of the notice of bar in a letter dated 8 August 2025. No response was received until the 20 of August 2025, wherein the respondent did not consent to the upliftment of the bar. A counterclaim was not filed by the applicant. It approached this Court with a substantive application for the upliftment of the notice of bar and an order that the plea filed is regular and that it be granted leave to file a counterclaim. Costs of the application was prayed for only in event of opposition.

[7] The respondent opposed the application and filed an answering affidavit alleging that the applicant does not have the *locus standi* to bring the application as it is not an elected government body as it was disbanded. The national NFSRLF did not take over the administration of AFM Villiers and did not meet the requirements for the upliftment of the bar and the mandate to the current firm of attorneys is questionable as they do not

have instructions to act on behalf of the defunct fourth defendant. In the very same answering affidavit, the respondent indicated that they are willing to withdraw the High Court action against the fourth defendant (applicant herein) in light of the fact that the CCMA award and Magistrate Court action resulting in execution in respect of arrear salaries had been satisfied. Moreover, though the Second Magistrate Court action was still pending, given their knowledge that the applicant no longer exists, and has no assets available for attachment if his claim is upheld. Also, as his claims for arrear salaries had been paid and there is no longer an unsatisfied claim existing in the Magistrate Court but the second action had not been withdrawn as a notice of intention to defend had been filed.

[8] The respondent in particular, indicated that withdrawal of action against the fourth defendant in *casu* would thus bring an end to its litigation against the fourth defendant in the main action and that he merely sought the court's leave to formally withdraw his claim against AFM; Villiers. Furthermore, it was indicated that should he be granted leave to withdraw, the upliftment of the notice of bar would be rendered obsolete. The notice of withdrawal was annexed as ER13 to the answering affidavit which was not only served on the applicant but to which, the applicant filed a replying affidavit. No tender for costs was made hence my point of adjudication as parties argued costs.

[9] Counsel for the applicant argued that as per the answering affidavit and the notice of withdrawal annexed to, it was evident that the respondent intended to withdraw its action in the High Court without a tender for costs and that the court award wasted costs of the interlocutory application in favor of the applicant. This was due to the fact that the respondent confirmed under oath that he had received the arrear salary payments and where the first action in the Magistrate Court was concerned, execution had indeed taken place and all debts of the applicant had thus been satisfied. They also did not obtain consent from the respondent and were forced to bring a substantive interlocutory application for the upliftment of the bar as per their notice of motion.

[10] Counsel for the respondent indicated that though their intention was to withdraw the action against the fourth defendant, it does not mean that they should be saddled with wasted costs. It was not denied that a notice of withdrawal was annexed to their answering affidavit but contended that they were yet to request leave from court to

withdraw the action against the fourth defendant and that the applicant's request for costs was premature. Furthermore, the notice of withdrawal of action was conditional pending it being granted by the court as the answering affidavit illustrated that there is no longer a live dispute between the parties and thus, in the applicant persisting with its application for costs, it was argued that the court grant wasted costs of today in the respondent's favor.

[11] Rule 41(1) provides that before a matter is set down for hearing, the parties may with consent or with leave of court, withdraw such proceedings and file a notice of withdrawal with a consent order to costs.[1] In the absence of such a consent to costs, the other party may apply to court for such an order as to costs.[2] No affidavit is actually required and such application may be opposed.[3]

[12] In my view, the interlocutory application has become moot for several reasons. Firstly, the respondent, in his answering affidavit indicated that he intends withdrawing his action against the fourth defendant as the debt owed has been satisfied by a favorable CCMA award. A consent to judgment in case number 06 /2021 was granted and duly satisfied via a writ of execution by the sale of immovable properties. In addition to this, the action in the High Court for arrear salaries could not be pursued as all outstanding amounts were received and therefore, satisfied in the year 2024.

[13] Secondly, the respondent indicated that the second action under case number 10/2024 in the Magistrate Court had not yet been withdrawn as the applicant had filed an intention to defend and was served with a notice of bar so that they can plead to the action. The respondent in his answering affidavit indicated that the debt had been satisfied in 2024. It comes as no surprise then that the respondent has no further claims against the applicant as all the debts including this High Court matter were satisfied hence

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[1] Rule 41(1)*(a)* and *(b)*.

[2] Rule 41(1)*(c)*.

[3] *Nel v OVS Staalkonstruksie en Algemene Sweiswerke* 1977 (3) SA 993 (O) at 996H; *Wildlife and Environmental Society of South Africa v MEC for Economic Affairs, Environment and Tourism, Eastern Cape and Others* 2005 (6) SA 123 (E), distinguishing *Kaplan v Dunell Ebden and Co* 1924 EDL 91 at 93, and holding that it was no authority for the proposition that a court, faced with an application for costs in terms of subrule (1)*(c)*, may have no regard whatsoever to the papers filed in the main proceedings in order to resolve the cost issue at 127J–128C. See also *Hull v Free Market Foundation (Southern Africa) and Others* [2023] ZAGPJHC 103 para 41; *AS v Minister of Health and Others; BM and Another v Minister of Health and Others* [2024] ZAWCHC 171 para 53, where it was also held that regard could be had to affidavits by prospective *amici* even in instances where they were not admitted or had themselves withdrawn from the proceedings.

the notice to withdraw the action against the applicant was mentioned in the answering affidavit and even attached as annexure ER13. It would have been preferable that the respondent would have filed its withdrawal of action against the applicant prior to filing an answering affidavit or for that matter, before refusing consent to the upliftment of bar as he knew he would not be pursuing the action against the applicant in the main action in this court. This however was not done.

[14] Thirdly, if this was within the knowledge of the respondent that his claims had been satisfied in the year 2024, it would effectively mean that despite this knowledge, they did not consent to the upliftment of the bar as requested in August 2025 which in turn, caused the applicant to bring a substantive application for the upliftment of the notice of bar and that their plea be deemed regular and that they be allowed to file a counterclaim. The substantive application for the upliftment of the bar is not only voluminous, but has brought to light that there are no amounts of money being owed to the respondent but, leave to file counterclaim is also being sought for an amount R2.5 million paid over in lieu of the sale in execution of immovable properties which were as per the deeds office,[4] properties sold in execution and confirmed in writing by AFM National Office in the form of a letter dated 29 July 2025,[5] as addressed to the attorneys of record of the respondent herein.

[15] Lastly, the respondent's opposing and or answering affidavit is dated 20 October 2025. Logic dictates that by this date at least, the respondent was aware that the interlocutory application would be obsolete as they intended to request leave from court to withdraw the action against the applicant who is the fourth defendant in the main action. This not only caused the applicant to file a replying affidavit, but also for the matter to be set down for hearing despite them being informed in the applicant's replying affidavit that they intend requesting an order for costs. They thus ought to pay wasted costs which rendered the hearing of this matter obsolete. It is trite that costs follow the result. I will however order that the respondent pays the wasted costs of this application on a party and party scale.

[16] Accordingly, it is ordered:

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[4] Indexed bundle p 87 – 92 Annexures AFM 13 -15.
[5] Ibid, p 93.

1 The respondent shall pay the wasted costs of the interlocutory application on a party and party scale.

O R MAJOSI

ACTING JUDGE OF THE HIGH COURT

Appearances

For the applicant:	M Smit
Instructed by:	Cliffe Dekker Hofmeyr Inc, Johannesburg c/o Noordmans Attorneys, Bloemfontein
For the first respondent:	L De Haan
Instructed by:	Haarhoff, Fourie & Partners, Balfour c/o Hendre Conradie Inc, Bloemfontein.