REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG LOCAL DIVISION, JOHANNESBURG

(1) REPORTABLE: NO (2) OF INTEREST TO OTHER JUDGES: NO (3) REVISED: NO 29/7/26 [redacted] DATE SIGNATURE

Case Number: 2026-124143

In the matter between:

MBONENI BENEDICTA MAUMELA Applicant

and

THE COMMISSIONER FOR THE SOUTH AFRICAN REVENUE SERVICE Respondent

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JUDGMENT

WENTZEL -THOMPSON J

Introduction

[1] This application came before me in the urgent court under circumstances where the matter was no longer urgent. This notwithstanding, counsel for the applicant proceeded in seeking punitive costs in the urgent court, that I ought properly never to have permitted. Costs are generally never urgent and should not occupy the time of extremely busy urgent courts.

[2] The applicant initially sought urgent interim relief restraining the respondent, the Commissioner for the South African Revenue Service ("SARS"), from enforcing payment of an assessed tax debt owing by the applicant pending the determination of review proceedings directed at SARS' refusal to suspend payment in terms of s 164 of the Tax Administration Act 28 of 2011 ("the TAA").

[3] In its application, the applicant challenged SARS' refusal to suspend payment. Before the Court was required to adjudicate the merits of that challenge, SARS revisited its decision and withdrew it. The consequence was that the principal relief sought in the notice of motion ceased to be contentious, leaving only the appropriate order as to costs for determination.

[4] As a consequence, the hearing became concerned solely with the question of costs, and more particularly whether the respondent's conduct justified an order directing it to pay the applicant's costs on the punitive attorney and client scale.

[5] Although the issue remaining for determination is confined to costs, it raises questions of broader significance concerning the proper exercise of the Court's discretion where litigation is rendered unnecessary by the subsequent conduct of one of the litigants. It also requires consideration of the statutory framework created by s 164 of the TAA, the legislative policy commonly described as the "pay now, argue later" principle, and the extent to which the withdrawal of an administrative decision after litigation has commenced may properly influence the nature of the costs order ultimately made.

The arguments advanced by the parties

[6] The applicant submitted that the respondent's withdrawal of its refusal to suspend payment amounted, in substance, to an acknowledgment that the urgent application ought never to have been necessary. It was contended that the respondent had failed to respond appropriately to the applicant's requests before litigation commenced and had only reconsidered its position once served with court papers. On that basis, counsel argued that the respondent's conduct warranted not merely an adverse costs order but the Court's marked disapproval through an award of attorney and client costs.

[7] SARS refuted its obligation to pay the costs of the application, let alone the punitive costs sought by the applicant. The respondent maintained that the withdrawal of its decision had occurred through its ordinary administrative processes rather than as a consequence of the institution of proceedings. It further emphasised that SARS administers a complex statutory scheme involving the collection of national revenue and the consideration of numerous requests for suspension of payment under s 164 of the TAA. The mere fact that reconsideration occurred after proceedings had been launched, it argued, did not establish mala fides, unreasonableness or conduct deserving of censure warranting a punitive order of costs.

[8] In my view, the applicant was justified in approaching the Court on an urgent basis. Equally, however, I am unable to conclude that the respondent's conduct in not previously consenting to an Order staying its obligation to pay the assessed amount was so unreasonable, oppressive or reprehensible as to justify the exceptional order sought. Whilst the chronology of events plainly supports an award of costs in the applicant's favour, it does not follow that it warrants a departure from the ordinary rule that such costs should be taxed on the party and party scale.

The statutory framework

[9] The dispute arises against the backdrop of the statutory scheme established by the TAA. The Act was enacted to provide a coherent framework for the administration of tax, balancing the imperative of efficient revenue collection against the procedural rights afforded to taxpayers who dispute assessments or other administrative decisions.

[10] Central to the present matter is s 164 of the TAA. That section embodies a legislative policy of long standing in South African revenue law, namely that the lodging of an objection or appeal does not suspend the taxpayer's obligation to pay tax. Unless SARS exercises its statutory discretion to suspend payment, the assessed tax remains payable notwithstanding the existence of pending dispute resolution proceedings, objections or appeal proceedings.

[11] Section 164(1) accordingly provides that the obligation to pay tax, and SARS' entitlement to recover tax, are not suspended merely because an objection or appeal has been lodged. Subsection (2) empowers a senior SARS official to suspend payment having regard to the circumstances of the particular case, whilst subsection (3) identifies a non-exhaustive list of factors to which regard may be had in exercising that discretion. Those include the taxpayer's compliance history, the risk of dissipation of assets, the taxpayer's ability to furnish security, the prejudice likely to be suffered by either party and whether the taxpayer is able to demonstrate irreparable hardship if payment is enforced before the dispute is finally determined.

[12] Parliament has therefore deliberately departed from the ordinary consequence that might otherwise follow from the institution of legal proceedings. Whereas litigation ordinarily suspends enforcement until rights have been finally determined, the TAA reverses that position in relation to tax debts. The assessment remains enforceable unless SARS decides otherwise. The discretion conferred by s 164 is consequently exceptional and is directed at mitigating hardship in appropriate cases without undermining the fundamental objective of securing the fiscus' ability to collect revenue efficiently.

[13] The constitutional validity of this legislative policy was confirmed more than two decades ago by the Constitutional Court in *Metcash Trading Ltd v Commissioner, South African Revenue Service*.[1] In rejecting the contention that the predecessor provisions unjustifiably limited the constitutional right of access to courts, Kriegler J observed that the uninterrupted collection of revenue constitutes a matter of considerable public importance. Government cannot function if taxes become routinely unenforceable pending lengthy disputes. The legislature was accordingly entitled to require payment first whilst simultaneously creating mechanisms through which taxpayers might challenge assessments and, in appropriate cases, obtain administrative relief from the obligation to pay immediately.

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[1] *Metcash Trading Ltd v Commissioner, South African Revenue Service* 2001 (1) SA 1109 (CC) paras 46-62.

[14] That principle has repeatedly been reaffirmed by our Courts. The Supreme Court of Appeal has consistently recognised that the "pay now, argue later" regime serves an important fiscal purpose and that suspension of payment constitutes an exception rather than the rule.[2] It follows that a taxpayer enjoys no entitlement as of right to the suspension of payment merely because an objection or appeal has been noted. The power remains a discretionary one vested in SARS, to be exercised judicially and in accordance with the statutory criteria.

[15] The statutory scheme also recognises that administrative decisions are not immutable and SARS is not *functus officio* as are judges. Section 9 of the TAA empowers SARS, in specified circumstances, to withdraw or correct decisions where it is satisfied that this is warranted. The existence of that power reflects an important feature of modern administrative tax governance; administrative decision-makers are not invariably required to persist in defending decisions once they become persuaded that reconsideration is appropriate. On the contrary, good tax administration often requires the correction of decisions without compelling a litigant to approach the courts to pronounce upon their validity.

[16] The present matter illustrates precisely such a situation where the respondent, after receiving the current application or, on its version, correspondence from the applicant, exercised its discretion to reconsider and withdraw its decision.

The factual background

[17] The material facts are largely common cause. During October 2024, SARS raised additional assessments against the applicant in respect of the 2017 to 2023 tax years, resulting in an alleged liability of approximately R39.9 million inclusive of penalties and interest. The applicant objected to those assessments

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[2] See, for example, *Commissioner for the South African Revenue Service v Capstone 556 (Pty) Ltd* 2016 (4) SA 68 (SCA); *Commissioner for the South African Revenue Service v Hawker Air Services (Pty) Ltd* 2006 (4) SA 292 (SCA).

and, contemporaneously, requested that payment of the disputed tax be suspended in terms of s 164 of the TAA pending the resolution of the tax dispute.

[18] The request for suspension was refused. In a written decision SARS explained that it considered, amongst other matters, the statutory factors identified in s 164(3). It concluded that there was *prima facie* evidence of fraud, that the applicant had failed to establish irreparable hardship, that she possessed substantial assets and income, and that the interests of the fiscus outweighed any prejudice asserted by the taxpayer. SARS accordingly required payment of the outstanding tax debt and advised that collection proceedings could follow in the event of non-payment.

[19] The applicant disputed both the correctness of the underlying assessments and the lawfulness of the refusal to suspend payment. She maintained that SARS had misconstrued the evidence, had failed properly to evaluate the statutory criteria prescribed by s 164(3), and had reached conclusions unsupported by the available material. Those issues, however, never ultimately came before the Court for adjudication because the respondent subsequently withdrew the impugned decision.

The institution of the urgent application

[20] Following SARS' refusal to suspend payment, the applicant's attorneys addressed further correspondence to the respondent requesting that the decision be reconsidered and that payment of the assessed tax be suspended pending the final determination of the underlying tax dispute. The correspondence made plain that, absent such reconsideration, the applicant intended approaching this Court on an urgent basis for appropriate interim relief.

[21] It is common cause that the reconsideration sought was not granted. Accordingly, the applicant accordingly launched the present application on an urgent basis. In Part A of the notice of motion the applicant sought interim relief restraining SARS from enforcing payment of the disputed tax debt pending the determination of review proceedings directed at the lawfulness of the refusal to suspend payment. Part B contemplated the review and setting aside of that

administrative decision. The notice of motion further sought costs on the attorney and client scale in the event that the application was opposed.

[22] The founding affidavit emphasised the enormous amount of the assessed liability and the prejudice which the applicant contended would result were SARS to proceed with collection before the review could be determined. The applicant alleged that the refusal to suspend payment was reviewable because SARS had failed properly to apply the statutory criteria contained in s 164(3) of the TAA, had reached irrational conclusions on the evidence before it and had thereby exercised its statutory discretion unlawfully.

[23] Those allegations were met by a comprehensive answering affidavit in which SARS defended the lawfulness of the impugned decision and disputed the existence of urgency. The respondent maintained that the senior SARS official who considered the application had taken into account each of the factors identified by the legislature and had exercised the discretion entrusted to SARS in a manner that could not be impugned on review. The merits of those competing contentions, however, ultimately ceased to require determination on withdrawal of the impugned decision.

[24] This is because, before the matter was argued, SARS withdrew the decision refusing the suspension of payment. The effect of that withdrawal was that the proceedings before me became academic.

[25] Accordingly, at the hearing before me, the argument became confined to the appropriate costs order.

The parties' submissions

[26] On behalf of the applicant it was submitted that SARS' conduct justified the exceptional order of attorney and client costs. Counsel argued that the application should never have been necessary because the applicant had alerted SARS to its intention to seek urgent relief and had afforded it an opportunity to reconsider its position before litigation became necessary. Notwithstanding that opportunity, so the argument goes, SARS had persisted in maintaining the refusal to suspend payment. The applicant's counsel maintained that it was only

after the application had been served that the respondent withdrew its decision and consented to the relief sought. The applicant submitted that the chronology itself demonstrated that the institution of proceedings had been necessary to secure the relief ultimately obtained.

[27] It was further argued that, had SARS acted reasonably, it would have suspended payment or, at the very least, agreed not to pursue collection measures pending reconsideration of the applicant's request. By failing to do so, SARS compelled the applicant to incur the considerable expense associated with urgent High Court proceedings. Counsel submitted that ordinary costs would not adequately compensate the applicant for having been forced to resort to litigation in circumstances where the respondent subsequently accepted that the impugned decision should be withdrawn.

[28] SARS approached the matter differently; it disputed that its conduct warranted judicial censure. Counsel emphasised that the respondent had not withdrawn its decision because proceedings had been instituted but because the matter had, in due course, progressed through the respondent's internal administrative processes and a decision in the normal course had been taken to review and ultimately, withdraw its decision. It was submitted that no inference could properly be drawn from the mere fact that reconsideration occurred after litigation had commenced.

[29] SARS further stressed the statutory environment within which it operates requires the determination of an enormous number of objections, appeals and requests for suspension of payment. Decisions of that nature inevitably involve the consideration of extensive financial material, compliance histories, revenue implications and the statutory criteria prescribed by s 164. Counsel submitted that it would be unrealistic to expect every request for suspension of payment to be determined with the expedition desired by taxpayers.

[30] The respondent also relied upon the legislative policy embodied in s 164 itself. It was pointed out that parliament has deliberately determined that assessed tax remains payable notwithstanding the existence of pending objection or appeal proceedings. The default position established by the statute is therefore one of

immediate enforceability; suspension of payment constitutes an exception to that general rule and depends upon the exercise of a statutory discretion vested exclusively in SARS. Counsel submitted that the applicant's argument effectively inverted that statutory scheme by treating suspension as though it were the default position which SARS was obliged to adopt unless compelling reasons existed to the contrary.

[31] Finally, it was submitted that there was no evidence of mala fides, dishonesty, abuse of process or other conduct traditionally associated with punitive costs.

The applicable legal principles

[32] The determination of costs has always fallen within the discretion of the lower court. That discretion is a judicial one, to be exercised having regard to considerations of fairness to both parties and the interests of justice. Whilst the general rule is that costs follow the result, the rule is neither inflexible nor exhaustive. The court retains a wide equitable discretion to depart from the ordinary rule where the circumstances so require.

[33] Where litigation becomes moot because the respondent withdraws the impugned decision in the face of litigation, the court ordinarily asks whether the institution of proceedings was reasonable when viewed objectively at the time they were instituted. If so, the applicant will usually be entitled to recover the costs thereby incurred notwithstanding that the court is not ultimately called upon to decide the substantive merits. The rationale is obvious; a litigant who has been reasonably driven to court should not ordinarily be left out of pocket merely because the opposing party subsequently renders the proceedings unnecessary.

[34] That principle does not, however, necessarily resolve the present dispute. The question is whether the facts justify the Court's marked disapproval through an order directing payment of attorney and client costs.

[35] It is to that issue that I now turn.

Punitive costs: the applicable principles

[36] The distinction between an award of costs on the ordinary party and party scale and one on the attorney and client scale is well established. The former is compensatory in nature and is intended to indemnify a successful litigant for those costs reasonably and necessarily incurred in the conduct of the litigation, albeit not in full. An award of attorney and client costs, by contrast, represents a deliberate departure from the ordinary rule. It entitles the successful litigant to recover a substantially greater proportion of the legal expenses actually incurred and, more importantly, constitutes the Court's expression of its disapproval of the conduct of the unsuccessful litigant.

[37] The *locus classicus* in this regard I the decision of Tindall JA in the old decision *Nel v Waterberg Landbouwers Ko-operatieve Vereeniging*,[3] where it was observed that an order for attorney and client costs is an extraordinary one made where, by reason of special considerations arising from the conduct of the losing party, the Court considers it just to ensure that the successful litigant is more fully indemnified than would be achieved by an ordinary costs order.

[38] Subsequent decisions have reiterated that punitive costs are reserved for exceptional circumstances involving conduct that is dishonest, fraudulent, vexatious, frivolous, reckless, abusive of the court's process or otherwise deserving of the Court's marked censure.[4] The discretion remains broad, but it is one to be exercised sparingly.

[39] In *Public Protector v South African Reserve Bank*[5] the Constitutional Court reaffirmed that attorney and client costs serve not merely a compensatory purpose but also express judicial disapproval of litigation conduct falling markedly short of that expected of parties before the courts.[i] Similar observations appear throughout our jurisprudence. The award is not intended to punish an unsuccessful litigant simply because its legal position proves ultimately to have

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[3] *Nel v Waterberg Landbouwers Ko-operatieve Vereeniging* 1946 AD 597 at 607.
[4] See, for example, *Johannesburg City Council v Television & Electrical Distributors (Pty) Ltd* 1997 (1) SA 157 (A); *Plastic Converters Association of South Africa on behalf of Members v National Union of Metalworkers of South Africa* 2016 (3) SA 250 (LAC) paras 46-48.
[5] *Public Protector v South African Reserve Bank* 2019 (6) SA 253 (CC) paras 8-10, 223-225.

been unsustainable. It is directed instead at conduct which the Court considers sufficiently egregious to justify its condemnation.

[40] **[38]** Equally important is the principle that costs remain a matter of judicial discretion. As was observed by the Constitutional Court in *Ferreira v Levin NO*,[6] an appellate court will ordinarily interfere with a costs order only where that discretion has not been judicially exercised. Ths requires the Court to evaluate the conduct of the parties throughout the litigation, the nature of the dispute, the public interests implicated and the overall interests of justice.

[41] The applicant's argument, properly analysed, is that the respondent's conduct falls within that exceptional category because it failed to respond favourably to the applicant's request before proceedings were instituted and only withdrew the impugned decision after the urgent application had been served.

[42] It is therefore necessary to examine whether the chronology alone is capable of supporting the inference sought to be drawn by the applicant.

The effect of the withdrawal of the impugned decision

[43] It cannot seriously be disputed that justified the applicant the seeking the relief sought in Part A of its notice of motion on an urgent basis. Had the respondent maintained its original decision, this Court would have been required to determine the lawfulness of the exercise of the discretion conferred by s 164 of the TAA. By withdrawing that decision, SARS rendered such adjudication unnecessary.

[44] It does not follow, however, that every administrative decision withdrawn after litigation has commenced should be regarded as an implicit concession that the decision ought never to have been made or that the institution of proceedings was the sole reason for the change in position. Administrative decision-making is not static. Public authorities routinely reconsider decisions in light of additional information, internal review, legal advice or further reflection. Section 9 of the TAA itself recognises that SARS may withdraw or correct decisions in appropriate circumstances. The statutory conferral of such a power necessarily

[6] *Ferreira v Levin NO* 1996 (2) SA 621 (CC) paras 3-5.

contemplates that decisions may legitimately be revisited without judicial intervention.

[45] Indeed, constitutional principles point in the same direction. Section 195 of the Constitution requires public administration to be accountable, responsive and governed by the values of good administration. Those obligations are not served by encouraging organs of state to persist in defending decisions which, upon reconsideration, they no longer consider appropriate. To the contrary, the constitutional imperative of lawful administration is ordinarily advanced where an administrator is prepared to revisit and correct an earlier decision without requiring the Court formally to pronounce upon its validity.

[46] Were courts routinely to infer culpability merely because an administrative decision was withdrawn after proceedings had been instituted, public authorities could become reluctant to reconsider decisions once litigation had commenced for fear that any alteration of their position would automatically expose them to allegations of misconduct and claims for punitive costs. Such an approach would discourage rather than encourage responsible administrative decision-making; it would reward institutional obstinacy instead of administrative self-correction.

[47] None of this is to suggest that the timing of the withdrawal of the respondent's decision is irrelevant; far from it: The chronology plainly remains an important consideration in determining liability for costs. A respondent who renders litigation unnecessary after proceedings have properly been instituted will ordinarily bear the costs. That principle, however, does not automatically justify a punitive order as to costs.

The statutory context

[48] The statutory context is of central importance. Parliament has deliberately adopted a revenue collection system in which the obligation to pay assessed tax is not suspended merely because the taxpayer disputes liability. Section 164(1) of the TPA provides, in clear terms, that the obligation to pay tax and the right of SARS to receive and recover tax are not suspended by an objection or appeal unless a senior SARS official directs otherwise in terms of the section.

[49] That policy reflects what has long been described as the "pay now, argue later" principle. Although the expression predates the enactment of the Tax Administration Act, the principle has repeatedly been recognised by our courts as one of the indispensable features of an effective system of tax administration. In *Metcash*, Court explained that the uninterrupted collection of revenue constitutes a matter of compelling public importance as government depends upon the continuous receipt of revenue to discharge its constitutional and statutory obligations; were taxpayers generally entitled to suspend payment simply by noting objections or appeals, the efficient collection of revenue would be seriously compromised and the fiscus exposed to obvious prejudice. It was thus found that Parliament was entitled to strike the balance by requiring payment to be made whilst simultaneously preserving comprehensive procedures through which taxpayers may challenge assessments and, where appropriate, seek relief from the obligation to pay immediately.

[50] The Supreme Court of Appeal has consistently reaffirmed that legislative policy in *Commissioner for the South African Revenue Service v Hawker Air Services (Pty) Ltd*,[7] the Court recognised that the purpose of the statutory regime is to protect the fiscus by ensuring that tax remains recoverable notwithstanding pending disputes, whilst permitting SARS, in appropriate circumstances, to suspend payment where fairness and the statutory criteria justify such relief.

[51] Likewise, in *Commissioner for the South African Revenue Service v Capstone 556 (Pty) Ltd* ,[8] the Court emphasised that the discretion conferred by s 164 is an exceptional one, to be exercised judicially upon consideration of the factors identified by the legislature rather than as a matter of entitlement on the part of the taxpayer.

[52] The significance of these authorities illustrates the statutory environment within which SARS operates. In refusing suspension, SARS was exercising a discretion expressly conferred upon it by Parliament within a legislative scheme in which payment rather than suspension is the default position. It cannot therefore be

[7] *Commissioner for the South African Revenue Service v Hawker Air Services (Pty) Ltd* 2006 (4) SA 292 (SCA).
[8] *Commissioner for the South African Revenue Service v Capstone 556 (Pty) Ltd* 2016 (4) SA 68 (SCA)

said that SARS acted malafide merely because it initially declined to suspend payment.

[53] The applicant's submission that SARS ought simply to have agreed to suspend payment before the institution of proceedings became necessary proceeds from a premise that is inconsistent with the statutory scheme itself. Section 164 does not confer upon taxpayers a presumptive entitlement to suspension pending objection or appeal; rather, it entrusts the decision to a senior SARS official who must weigh the competing interests identified by Parliament. The fact that SARS, upon reconsideration, subsequently withdrew its decision not to suspend payment, does not demonstrate that it was under a legal obligation to have done so at an earlier stage; nor does the subsequent withdrawal of the decision establish that the original refusal was so manifestly indefensible as to justify the Court's censure through an award of attorney and client costs.

[54] On the contrary, s 9 of the TAA empowers SARS to withdraw or correct administrative decisions in prescribed circumstances. The existence of that power reflects a legislative recognition that administrative decision-making is not immutable; tax administrators are entitled, and indeed expected, to revisit decisions where further consideration demonstrates that this is appropriate. The statutory scheme therefore contemplates responsible administrative self-correction as part of good governance.

[55] There is no suggestion on the papers that SARS deliberately persisted in defending an indefensible decision. At its highest, the applicant's complaint is that SARS acted too slowly in reconsidering its position. Delay, even if open to criticism, does not without more amount to the sort of reprehensible conduct which our courts have consistently held to justify an award of attorney and client costs.

Conclusion

[56] Two questions ultimately served before me: The first was whether the applicant acted reasonably in instituting urgent proceedings; the second was whether the SARS's conduct was so unreasonable as to warrant the Court's censure through

an award of attorney and client costs. The fact that the first question must be answered in the applicant's favour does not inexorably determine the second.

[57] The applicant cannot fairly be criticised for approaching the Court on an urgent basis. At the time the application was launched, SARS had refused the request to suspend payment, the applicant remained exposed to the immediate enforcement of a substantial tax liability, and no indication had been given that the impugned decision would shortly be revisited. The applicant had sought to persuade SARS to reconsider its decision before resorting to litigation, but without success. Objectively viewed, the institution of urgent proceedings was therefore a reasonable and proportionate response to the position confronting the applicant.

[58] It follows that, had SARS persisted in defending its refusal, this Court would have been required to determine the lawfulness of that administrative decision. Instead, SARS withdrew the decision before the matter was argued. That withdrawal substantially afforded the applicant the practical relief sought in Part A of the notice of motion and rendered the principal dispute academic. In those circumstances, fairness dictates that the applicant should not be left out of pocket for having instituted proceedings which were objectively justified when commenced.

[59] The respondent should therefore bear the ordinary costs occasioned by the urgent application. It was the respondent's subsequent conduct which rendered the litigation unnecessary. Had the impugned decision been withdrawn before proceedings were instituted, or had SARS indicated that reconsideration was already under way and that enforcement would be held in abeyance pending that reconsideration, the institution of urgent proceedings may well have been avoided. No such accommodation was afforded. The ordinary consequence is that the respondent should indemnify the applicant for the reasonable costs thereby incurred.

[60] The position is materially different, however, when one consdiers the applicant's claim for attorney and client costs.

[61] The applicant's counsel submitted that because SARS withdrew its decision only after service of the application, the Court should infer that the proceedings themselves compelled the respondent to abandon an indefensible position. I am unable to accept that such an inference necessarily follows from the facts before me.

[62] Administrative decisions are frequently reconsidered after litigation has commenced. Sometimes that reconsideration is prompted by the proceedings themselves; sometimes it results from internal review, further investigation, additional legal advice or the completion of administrative processes already under way. The mere fact that a decision is withdrawn after proceedings have commenced does not establish that it was maintained in bad faith until that moment, nor does it necessarily demonstrate that the institution of proceedings alone produced the change in position.

[63] In the present matter, SARS has consistently maintained that the withdrawal occurred through its ordinary administrative processes. Whether that explanation is ultimately correct is not something which this Court is required to determine. The substantive merits have not been argued, the review has not been adjudicated and the respondent has not conceded that its original decision was unlawful or wrong. The withdrawal of the decision cannot therefore be treated as an admission that the refusal to suspend payment was legally indefensible.

[64] Nor, in my view, should this Court readily infer mala fides merely because SARS did not act with the expedition desired by the applicant. SARS administers a complex statutory scheme affecting millions of taxpayers and involving the collection of the revenue upon which the functioning of the State depends. It has to process an innumerate number of requests for suspension of payment. In considering these requests, Sars is required to consider numerous statutory factors, including the protection of the fiscus, the taxpayer's compliance history, the possibility of irreparable prejudice and the risk that assets may be dissipated; decisions cannot invariably be taken immediately upon receipt of a request.

[65] In my view, the applicant has not demonstrated the exceptional circumstances required for me to make a punitive order for costs against SARS; on the contrary,

although the applicant was justified in bringing the application, I cannot see why, when SARS exercised its discretion without any evidence that this discretion was exercised improperly, it should be mulcted with costs at all. There is no evidence of abuse of process or wilful disregard of the applicant's rights before me; quite the opposite, SARS was perfectly within its rights to enforce the "pay now, argue later" principle recognised by the Courts. Nor can it be said that the respondent persisted in defending an indefensible case to the bitter end; it did not and instead exercised its statutory power to withdraw its decision, thereby rendering the substantive litigation unnecessary.

[66] The Constitution demands accountable, responsive and lawful public administration. Those values are promoted, rather than undermined, where an administrator voluntarily revisits a decision. If every withdrawal of an administrative decision after the commencement of litigation were routinely to attract punitive costs, organs of state might be encouraged to persist in defending doubtful decisions merely because the forensic consequences of changing course had become more onerous than continuing the litigation. Such an approach would serve neither litigants nor the administration of justice.

[67] Whilst I accept that the applicant was justified in launching the application and should recover the costs thereby occasioned, I am not persuaded that the respondent's conduct exhibits the degree of opprobrium contemplated by the authorities to which I have referred. The interests of justice are sufficiently served by an award of costs on the ordinary party and party scale.

[68] In the result, the applicant succeeds in obtaining its costs of the application, but not on the punitive scale sought.

Order

[69] In the result, the following order is made:

(1). The respondent is ordered to pay the applicant's costs of the urgent application.

(2). Such costs shall be taxed on the party and party scale B.

(3). The applicant's claim for costs on the attorney and client scale is refused.

[redacted]

S.M. WENTZEL-THOMPSON J
JUDGE OF THE HIGH COURT
JOHANNESBURG

Date of the hearing:	4 June 2026
Date of the judgment:	30 July 2026
For the applicant:	Adv. BP Casey & Adv. K Senyatsi instructed by ST Attorneys.
For the respondent:	Adv. ST Seshoka Instructed by Madiba Motsai Masitenyane and Githiri Attorneys inc.(MMMG)