

IN THE HIGH COURT OF SOUTH AFRICAGAUTENG DIVISION, PRETORIACASE NO: 033715/2024DATE: 15.05.2026

DELETE WHICHEVER IS NOT APPLICABLE
 (1) REPORTABLE: ~~YES~~ / NO
 (2) OF INTEREST TO OTHER JUDGES: ~~YES~~ / NO
 (3) REVISED ✓

In the matter between

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ANNALI CHRISTELLE BASSON &
 FRANCOIS BOUWER

Applicant

And

MINISTER OF JUSTICE & CONSTITUTIONAL
 DEVELOPMENT & ANNALIEN SMIT

Respondent

J U D G M E N T

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VAN DER WESTHUIZEN, J: In matter 033715/2024, the applicants launched an application to compel the respondents to comply with the provisions of Rule 41(A) relating to the mediation possibility.

The truncated history of the matter in this regard, commenced on or about 3 February 2026, when the applicants served the required Rule 41(A) notice upon the

respondents' attorneys. In the present instance been the State Attorney Pretoria.

In terms of the further provisions of Rule 41(A), the respondents were obliged to deliver an amplified Rule 41 notice in response within 15 court days.

However, on 3 February, a letter was addressed by the State Attorney to the attorneys of the applicant indicating that, or suggesting that the mediation be put on hold pending other interlocutory issues.

10 On 4 February there was correspondence forwarded to the State Attorney pointing out the recording that the pleadings had been closed. There is no impediment to a mediation process being followed and it is not necessary at that stage to hold everything in abeyance until interlocutory applications had been finalised.

It would appear that the proposed interlocutory, or suggested interlocutory applications were Rule 28(1). On 13 February, the respondents withdrew their original 28(1) notice.

20 At that stage, there was no impediment to proceed with a response. The 15-day period in terms of the notice expired on 24 February 2026. Nothing was forthcoming.

Counsel on behalf of the respondents submitted that there was in principle agreement to mediation and immediately conceded that certain issues still had to be

sorted and finalised. That concession endorses the fact that the applicants were entitled to issue the Rule 41(A) notice.

On 25 February the applicants' attorney granted a further five days to enable the respondents to comply with the Rule 41(A) application, indicating that if they do not respond appropriately, an application to compel in terms of Rule 41(A) will be served.

Assuming that said extension warning was received
10 by the respondents' attorneys on 25 February, or shortly thereafter. They still did not respond.

On 9 March 2026, having received no response to any request, the application to compel in terms of Rule 41(A) was filed and served. Four or five days later a letter on 13 March 2026, the applicants' attorneys addressed a further letter, where it was indicated that the original plea amendment notice had been withdrawn and the parties were obliged to proceed on 16 March.

The respondents filed a response to the applicants'
20 Rule 41(A) notice and effectively complying with the application to compel them. The compliance by the respondents to the application did not deal with the issue of costs that were incurred to launch the application.

It is trite that where a party effectively concedes an application, or the relief in an application, it would be

obliged to pay the costs of such application. A full-hardiness of the respondents not tender and to outright refuse it, to pay the costs is not in accordance with the principles applicable.

In response to a request to tender the costs on 20 March, the respondents delivered a further notice of intended amendment. There appears to be a view that that amendment, or proposed amendment was defective, it was irregular and that was recorded in the applicants' response
10 thereto on 23 March 2026.

Still being full-hardy, the respondents refused in a letter of 26 March 2026 to tender the costs and suggested that the costs should be reserved, to be argued in the main application.

On 10 April 2026, the respondents effected their amendment of their plea, by delivering a compliant amended pages and that is a full month after they delivered their Rule 41(A) response.

On 29 April 2026, the respondents were advised of
20 the set down of the matter on 15 May, being today's date and that the issue of costs would be the only issue to be addressed.

The only response from the respondents was on 12 May 2026, three days earlier to today's date. On that day the respondents requested that the matter be removed

from the roll as it becomes opposed and to be moved to the opposed roll and an answering affidavit was also served.

The whole issue is, as counsel on behalf of the applicants submitted his opening submissions, in his oral argument was that it is a storm in a teacup. It is in fact a huge storm in a very small Espresso cup.

If it is correct, as is submitted on behalf of the respondents that in principle there was an agreement to mediate and considering the concession that there were still
10 issues that had to be finalised and those issues were finalised in the belated response to the Rule 41(A) notice and subsequent application to compel.

No logic can be inferred why there would be such a resistance to the issue of costs. Where, at that stage the costs were in a greater scheme negligible. Nevertheless, a simple compliance with an application's request evolved into a monstrous argument on costs.

It is submitted on behalf of the applicants that the applicants are now out of pocket, having to argue an
20 opposed motion on a simple issue such as costs and that the costs that are really in issue would be negligible, but for the full-hardiness on the part of the respondents, it is submitted today on behalf of the respondents that the whole issue, that the order in respect of costs which has now evolved into a monstrous opposed motion should be borne

by each party, should bear their own costs. The logic in that submission and proposal is lost.

The only inference, in my view, would be is that the parties are attempting to catch flies of one another. Taking the eye of the real problem why a matter has commenced, evolved into an agreed mediation, but still sticking needles in each other's eyes.

My initial view was that it being a storm in a teacup, that the issue of costs should be follow a very simple route,
10 namely that it be costs in the cause.

However, after hearing argument by both parties, it is clear that the respondents are trying their utmost to strain the relationships between the parties, by not addressing the real issue, but tending to draw out the litigation. Such attitude is not expected from the respondents in view of their varies capacities. It may very well be that it is an issue of egos, that does not warrant a matter to evolve into the present.

In my view, the applicants could also have stepped
20 down and agree to an order, or to an agreement that the costs would be costs in the cause. If the applicants are successful in the mediation, they would get their costs. If the mediation fails and the applicants were successful in their action, they would still be awarded their costs.

The attempt to focus on skirmishes, rather than the

real battle, escapes the logical consequences of such actions.

It is further submitted on behalf of the applicants that the answering affidavit to this application and particular the issue of costs was deposed to by a person who does not have the personal knowledge. A reliance on a so-called confirmatory affidavit is neither here nor there.

The issue of condonation for the very late filing of the answering affidavit is also not properly addressed.

10 Following from the foregoing, I am of the view that there ought to be a distinguishing in cost orders. In the first instance, had the respondents played ball, the costs would have been on a party-and-party basis on Scale A. That ought to have been tendered by the respondents.

 However, the further costs that were incurred in arguing the issue of costs before the Court on an opposed basis, where there is no real reasons or circumstances explained why the answering affidavit is belatedly filed, at the so-called eleventh hour. That attitude on the part of the
20 respondents ought to be sanctioned.

ORDER

I accordingly grant the following order.

1. The respondents are to pay the costs incurred in the launching of the application to compel in terms of Rule 41(A) on a party-and-party basis, Scale A.
2. The further costs incurred as a consequence of a full-hardy opposition to the cost order, the respondents are directed to pay the costs of the frivolous opposition on an opposed scale of attorney and client.

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VAN DER WESTHUIZEN, J

JUDGE OF THE HIGH COURT

DATE: 4 September 2026



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