



**IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION, PRETORIA)**

(1)	REPORTABLE: YES/NO
(2)	OF INTEREST TO OTHER JUDGES: YES/NO
(3)	REVISED.
24/8/2026	
DATE	SIGNATURE

Case No: 2023-087030

In the matter between:

EVRON MINING (PTY) LTD

Applicant

and

FUTURE DYNAMIC INNOVATIONS (PTY) LTD

Respondent

Delivered: This judgment was handed down electronically by circulation to the parties' legal representatives by e-mail. The date for the handing down of the judgment shall be deemed to be 24 August 2026

JUDGMENT

M COETZEE, AJ:

Introduction

- [1] This application concerns the question as to whether the applicant should pay the respondent's costs on an attorney and client scale, following the applicant's withdrawal of its Rule 30 application against the respondent.
- [2] The applicant had already tendered to pay the costs of the respondent on a party and party scale, following the withdrawal of the Rule 30 application. This did not satisfy the respondent, who holds the view that costs ought to be paid by the applicant on an attorney and client scale.
- [3] The matter has been brought to the court by the respondent in terms of Rule 41(1)(c) of the Uniform Rules of court and is opposed by the applicant.

The applicant's argument

- [4] The applicant argues that the respondent has, when considering the principles applicable to the determination of costs, failed to demonstrate exceptional circumstances to justify a punitive cost order.
- [5] The applicant contends that, in bringing the Rule 30 application, it held the *bona fide* view that Rule 22 of the Uniform Rules of court did not accommodate circumstances where a special plea for jurisdiction and an exception could have been entertained simultaneously. However, and after having consulted counsel, the applicant withdrew the Rule 30 application and costs were tendered thereafter, demonstrating a *bona fide* attempt not

to prolong unnecessary and vexatious litigation after having been better informed.

- [6] According to the applicant, adequate costs will be recovered if the applicant pays all costs associated until the withdrawal of the Rule 30 application on a party and party scale, as tendered.

The respondent's argument

- [7] The respondent argues that the applicant only withdrew the Rule 30 application after both parties had already filed their heads of argument.

- [8] In the premises, the respondent contends that injustice will result if the respondent is not awarded attorney and client costs in respect of the applicant's withdrawn Rule 30 application, and furthermore that the granting of such a punitive cost order will ensure that the respondent will not unduly be left "out of pocket" as a result of the so-called abortive proceedings.

The legal framework

- [9] Rule 41(1)(a) provides as follows:

"(a) a person instituting any proceedings may at any time before the matter has been set down and thereafter by consent of the parties or leave of the Court, withdraw such proceedings, in any of which event he shall deliver a notice of withdrawal and may embody in such notice a consent to pay costs and the taxing master shall tax such costs on the request of the other party;

(b)...

(c) *if no such consent to pay costs is embodied in the notice of withdrawal, the other party may apply to Court on notice for an order of costs."*

[10] The general rule is that a party who withdraws proceedings is ordinarily liable for the costs occasioned by the withdrawal¹ and is, for purposes of costs, regarded as the unsuccessful litigant².

[11] As the Court explained in *Nel*³, party and party costs that a successful litigant may recover from the unsuccessful party are, almost invariably, not enough to fully cover the expenses incurred by the successful party in the litigation.

[12] However, the fact that a successful litigant may not recover every expense incurred by him in litigation does not, without more, constitute exceptional circumstances warranting punitive costs. The granting of such an order would still depend upon the particular facts of each case and remains a matter within the Court's discretion.⁴

¹ *Germishuys v Douglas Besproeingsraad* 1973 (3) SA 299 (NC)

² *Master Blaster (Pty) Ltd v Sasol Dyno Nobel (Pty) Ltd* [2020] ZAGPPHC 376 at par 15

³ *Nel v Waterberg Landbouwers Ko-operatiewe Vereeniging* 1946 AD 597

⁴ *Trencon Construction (Pty) Ltd v Industrial Development Corporation of South Africa* 2015 (5) SA 245 (CC)

[13] Punitive cost orders are extraordinary and are reserved for exceptional cases involving conduct deserving of the Court's disapproval, including vexatious, dishonest or abusive litigation.

[14] In *Lawyers for Human Rights v Minister in the Presidency*⁵, the Constitutional Court had to consider an adverse costs order against a party litigating to secure constitutional rights. It held that “vexatious” litigation is—

“litigation that [is] ‘frivolous, improper, instituted without sufficient ground, to serve solely as an annoyance to the defendant’. And a frivolous complaint? That is one with no serious purpose or value. Vexatious litigation is initiated without probable cause by one who is not acting in good faith and is doing so for the purpose of annoying or embarrassing an opponent. Legal action that is not likely to lead to any procedural result is vexatious.”

[15] A “manifestly inappropriate” application was described as an application that is “so unreasonable or out of line that it constitutes an abuse of process of court”.

[16] In this matter, the applicant admittedly misconceived the procedural position when it launched the Rule 30 application.

[17] However, there is nothing before this Court to suggest that the application was instituted *mala fide*, for an ulterior purpose or with the intention of harassing the respondent.

[18] Once the applicant obtained further legal advice and appreciated the difficulties confronting its application, it elected to withdraw the proceedings

⁵ 2017 (1) SA 645 (CC)

instead of persisting with litigation that it no longer considered sustainable. In my view, such conduct is not indicative of vexatiousness or an abuse of process.

[19] The fact that the withdrawal occurred only after the parties had filed heads of argument does not, without more, alter that conclusion. While the timing undoubtedly increased the costs occasioned by the Rule 30 application, those costs are included in costs tendered by the applicant.

[20] The respondent referred the Court to the matter of *Hyperception v Waterhouse*⁶, where the following was stated:

"It was submitted on behalf of the respondents that the appeal was prosecuted in an extremely careless and inept manner and that this court should in the totality of these circumstances show its disapproval by ordering that costs be paid on an attorney and client scale..."

It is true that the appeal was prosecuted carelessly and that in fact the explanation afforded on behalf of the applicant for the inordinate delay is hardly an explanation at all. However, the circumstances are not such as to warrant the costs order sought by the respondent"

[21] Considering the history of the matter, I am similarly unpersuaded that this is one of those rare cases in which the Court should express its disapproval of the applicant's actions through an attorney and client costs order.

[22] A party and party costs order is the appropriate order in the circumstances. Although the applicant's conduct was mistaken, it has not been shown to

⁶ [2006] SCA 137 (RSA)

have been vexatious, abusive or otherwise deserving of the Court's
censure.

[23] In the circumstances, I grant an order in the following terms:

ORDER:

1. The applicant is ordered to pay the costs of the Rule 30 application until the date of the withdrawal of such application on a party and party scale.
2. The respondent is ordered to pay the costs incurred after the date on which the applicant tendered the costs occasioned by the withdrawal, including the costs of this application in terms of Rule 41(1)(c).



MILUSKA COETZEE
ACTING JUDGE OF THE HIGH COURT OF
SOUTH AFRICA
GAUTENG DIVISION
PRETORIA

Hearing date: 10 November 2025

Judgment date: 21 August 2026

Counsel for the Applicant: Adv BC Smith

Applicant's Attorneys: Coenraad Kukkuk Attorneys

Counsel for the Respondent: Adv BP Geach SC

Respondent's Attorney: Van Dyk Steenkamp Attorneys