

REPUBLIC OF SOUTH AFRICA



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

CASE NO: 116737/2024

1. REPORTABLE: YES/ NO
2. OF INTEREST TO OTHER JUDGES: YES/NO
3. REVISED: YES / NO

DATE: 28 August 2026

SIGNATURE OF JUDGE:

In the matter between:

**VALLEY VIEW ESTATE (SAMRAND) HOMEOWNERS
ASSOCIATION NPC**

APPLICANT

and

**MOCHECHE PHILLEMONT MABUZA
MOTSEHOA JEMINA FAITH MABUZA**

**FIRST RESPONDENT
SECOND RESPONDENT**

JUDGMENT

WJ ROOS, AJ

Introduction

[1] This matter initially came before the court as an application for specific performance and interdictory relief. The Applicant, a non-profit company administering a homeowners' association, sought an order compelling the First and Second Respondents (the "Respondents") to vacate their property, alternatively, interdicting them from occupying it until they had obtained the requisite occupation certificates from both the Applicant and the City of Tshwane. The Applicant also sought a punitive costs order.¹

[2] By the time the matter was heard, the substantive dispute had become moot. It is common cause that the Respondents obtained the necessary occupation certificate from the City of Tshwane on 11 March 2025.² The Applicant accepts that the primary relief it sought is no longer necessary.³ The two remaining issues for determination by this Court are, first, whether condonation should be granted for the exceptionally late filing of the Respondents' answering affidavit, and second, the appropriate order as to costs.

Factual Background and Chronology

[3] The material facts are largely common cause. The Respondents are the registered owners of Erf 2[...], Valley View Estate (the "Property") and are members of the Applicant homeowners' association.⁴

[4] The relationship between the parties is governed by the Applicant's Memorandum of Incorporation ("MOI") and its Conduct Rules, which require homeowners to obtain an occupation certificate from the local authority and a certificate of completion from the Applicant prior to occupying their properties.⁵

[5] The key events unfolded as follows:

¹ Notice of Motion, prayers 1-3, CaseLines 074-4 to 074-5.

² Answering Affidavit, para 8.2, CaseLines 011-4; Joint Practice Note, para 10.2.

³ Joint Practice Note, para 10.2.

⁴ Founding Affidavit, para 9, CaseLines 074-9; Annexure "FA2", CaseLines 074-18.

⁵ Founding Affidavit, para 13 and 15, CaseLines 074-10 to 074-11, read with Annexure "FA5" (Conduct Rules).

- (i) **14 October 2024:** The Applicant launched this application, with the matter initially set down for hearing on the unopposed roll for 7 May 2025.⁶ At this time, the Respondents were occupying the Property without the requisite certificates.⁷
- (ii) **4 December 2024:** The application was personally served on the First Respondent.⁸
- (iii) **11 March 2025:** The Respondents obtained the Occupancy Certificate from the City of Tshwane.⁹
- (iv) **9 April 2025:** The Applicant's attorneys addressed a letter to the Respondents' attorneys, acknowledging that with the receipt of the occupation certificates, "there is no longer any reason to seek an interdict." However, they maintained that the application was justified and that the Respondents were liable for the wasted costs.¹⁰
- (v) **23 April 2025:** The Respondents delivered their notice of intention to oppose, some 147 calendar days after service of the application.¹¹
- (vi) **5 May 2025:** As a result of the notice to oppose, the Applicant removed the matter from the unopposed roll of 7 May 2025.¹²
- (vii) **9 June 2025 and 18 June 2025:** Further correspondence was exchanged in which the Applicant's attorneys reiterated their client's intention to proceed with the matter for a determination on costs and warned that an application for condonation would be required for the late filing of an answering affidavit.¹³

⁶ Notice of Motion, CaseLines 074-3; Applicant's Chronology Table, CaseLines X21.

⁷ Joint Practice Note, para 12.3 and 16.3.

⁸ Return of Service: 1st Respondent, CaseLines 074-122.

⁹ Answering Affidavit, para 8.2, CaseLines 011-4.

¹⁰ Replying Affidavit, Annexure "RA2", CaseLines 078-24 to 078-25.

¹¹ Notice of Intention to Oppose, CaseLines 2-1.

¹² Notice of Removal, CaseLines 075-1.

¹³ Replying Affidavit, Annexures "RA3" and "RA4", CaseLines 078-26 to 078-30.

- (viii) **9 July 2025:** The Applicant delivered a notice in terms of Uniform Rule 41(1)(c), indicating its intention to enrol the matter for an order as to costs.¹⁴ The Respondents, through their attorneys on 14 July 2025, correctly pointed out that this procedure was inappropriate as the Applicant had not withdrawn the main application.¹⁵
- (ix) **15 April 2026:** The Respondents delivered their answering affidavit, nearly a year after filing their notice to oppose and approximately 16 months after the application was first served.¹⁶
- (x) **16 April 2026:** In response to the filing of the answering affidavit, the Applicant removed the matter from the special interlocutory roll of 21 April 2026, indicating its intention to file a replying affidavit and set the matter down on the opposed roll.¹⁷
- (xi) **24 April 2026:** The Applicant delivered its replying affidavit.¹⁸

The issues for Determination

[6] Against this background, the two crisp issues before me are:

- (i) Whether condonation should be granted for the late filing of the Respondents' answering affidavit.
- (ii) Who should be liable for the costs of the application, and on what scale.

Condonation

[7] It is trite that an application for condonation is not for the mere asking. An applicant seeking this indulgence must show good cause. The principles governing

¹⁴ Notice in Terms of Rule 41(1)(c), CaseLines 076-2 to 076-4.

¹⁵ First Respondent's Response to the Applicant's Uniform Rule 41(1)(c) Application, Annexure "02", CaseLines 076-24.

¹⁶ Answering Affidavit, CaseLines 011-1.

¹⁷ Notice of Removal for Hearing Set Down 21 April 2026, CaseLines 077-1.

¹⁸ Replying Affidavit, CaseLines 078-1.

condonation were authoritatively set out in *Melane v Santam Insurance Co Ltd*,¹⁹ where the court held:

“In deciding whether sufficient cause has been shown, the basic principle is that the Court has a discretion, to be exercised judicially upon a consideration of all the facts, and in essence it is a matter of fairness to both sides. Among the facts usually relevant are the degree of lateness, the explanation therefor, the prospects of success, and the importance of the case. Ordinarily these facts are interrelated: they are not individually decisive, for that would be a piecemeal approach incompatible with a true discretion...”

[8] The delay in this matter is profound. The answering affidavit was delivered well over a year late. The explanation for this delay, as articulated by the First Respondent, is that he “genuinely and verily believed that the HOA would not persist” with the application.²⁰ This is not a reasonable or acceptable explanation. A litigant’s subjective belief about their opponent’s intentions cannot justify a wholesale disregard for the Uniform Rules of Court. The explanation is vague, fails to cover the entire period of the delay, and displays a lamentable lack of diligence.

[9] Ordinarily, such a defective explanation coupled with an inordinate delay would be fatal to an application for condonation. However, this court retains a discretion to admit an affidavit where it is in the interests of justice to do so. In this case, the substantive merits are moot. The only live dispute is that of costs. The answering affidavit, despite its lateness, contains the totality of the Respondents’ case on the question of costs. The Applicant has already had the opportunity to deal with these averments in its replying affidavit. To disregard the answering affidavit at this stage would mean deciding the issue of costs without having had full regard to the arguments of both parties.

[10] Given that the Applicant suffers no material prejudice in the ventilation of the costs argument by the admission of the affidavit, and in the interests of ensuring that the matter of costs is decided with reference to all the facts and submissions the

¹⁹ *Melane v Santam Insurance Co Ltd* 1962 (4) SA 531 (A) at 532C-E.

²⁰ Applicant’s Heads of Argument, para 5, CaseLines X3, referencing the Answering Affidavit.

parties wish to place before me, I am of the view that it is fair and just to grant condonation. This should not, however, be seen as an endorsement of the Respondents' conduct, which will be considered more fully when I address the scale of costs.

The Main Issue: Costs

[11] The ordinary rule is that costs follow the event, meaning the successful party should be awarded their costs. The first question, therefore, is to determine which party was substantially successful.

[12] The Respondents argue that because they complied, the application became moot, and the Applicant's persistence in pursuing costs constitutes an abuse of process. This argument is flawed. The Applicant launched the proceedings to compel the Respondents to comply with the estate rules and statutory provisions. This objective was achieved. The fact that compliance occurred after the application was launched and served creates a strong inference that the litigation was the direct cause, or catalyst, for the Respondents' actions. In substance, therefore, the Applicant was the successful party and is, in principle, entitled to its costs.

[13] The Respondents have raised several technical and procedural points in an attempt to resist a costs order. I will deal with each briefly.

- (i) **Authority of the Deponent:** The Respondents challenge the authority of the Applicant's deponent, Ms Redelinghuys, on the basis that the initial resolution only empowered her to engage in debt collection.²¹ This argument conflates the authority to launch proceedings with the standing of a witness to depose to an affidavit. As stated in *Prithilal v Akani Egoli (Pty) Ltd and Another*,²² it is the institution of the proceedings that must be authorised, not the act of deposing to an affidavit by a witness with personal knowledge. In any event, the Applicant has filed a further

²¹ First Respondent's Heads of Argument, paras 47-53, CaseLines X1-12 to X1-13.

²² *Prithilal v Akani Egoli (Pty) Ltd and Another* [2025] ZACC 5; 2026 (2) SA 1 (CC) at para [8]

resolution in reply which retrospectively ratifies the institution of these proceedings.²³ This point has no merit.

- (ii) **Alternative Remedy:** The Respondents contend that the Applicant had an alternative remedy in the form of levying a penalty.²⁴ This is also unpersuasive. The occupation of a building without an occupation certificate constitutes a statutory offence. An HOA cannot be expected to sanction an illegality by accepting a penalty in lieu of compliance. The primary remedy to prevent an ongoing breach is an interdict, which is precisely what the Applicant sought.
- (iii) **Procedural Missteps:** The Respondents place great store on the Applicant's incorrect use of a Rule 41(1)(c) notice. While the Respondents were correct that the procedure was inappropriate without a formal withdrawal, this is a minor procedural misstep in the broader context of the litigation and does not absolve the Respondents of their liability for the costs incurred up to that point.

[14] None of the points raised by the Respondents displaces the conclusion that the Applicant was justified in launching the application and is the substantially successful party.

The Scale of Costs: Punitive Costs

[15] The final issue is the scale of costs. The Applicant seeks an award on the attorney and client scale. A punitive costs order is an extraordinary remedy granted by a court to mark its disapproval of a litigant's conduct. The rationale, as articulated in the seminal case of *Nel v Waterberg Landbouwers Ko-operatiewe Vereeniging*,²⁵ is to ensure that the successful party is not left out of pocket due to "special considerations arising either from the circumstances which give rise to the action or from the conduct of the losing party."

²³ Replying Affidavit, para 3.5 and Annexure "RA1", CaseLines 078-5 and 078-23.

²⁴ First Respondent's Heads of Argument, para 68.3, CaseLines X1-18.

²⁵ *Nel v Waterberg Landbouwers Ko-operatiewe Vereeniging* 1946 AD 597 at 607.

[16] Such orders are warranted in cases of vexatious, unreasonable, frivolous, or dishonest conduct. In *F.B v J.B*,²⁶ the court affirmed that a punitive scale should be reserved for cases where a litigant has "conducted itself in a clear and indubitably vexatious and reprehensible manner." In *Hlatshwayo and Another v Road Accident Fund*,²⁷ the court penalised a party whose conduct conducted unreasonably to frustrate the objective of judicial case management and the effective disposal of litigation.

[17] In assessing the Respondents' conduct in this matter, I identify the following factors which, cumulatively, justify a punitive costs order:

- (i) **The Initial Breach:** The Respondents were in clear and ongoing breach of the estate rules, necessitating the litigation in the first place.
- (ii) **Unreasonable Post-Compliance Conduct:** After complying and rendering the main relief moot, the Respondents refused to tender the Applicant's wasted costs, thereby forcing the continuation of the litigation solely on the issue of costs.
- (iii) **Grossly Unreasonable Delay:** The delay of over a year in filing their answering affidavit, coupled with a wholly inadequate explanation, demonstrates a flagrant disregard for the Rules of Court and the legal process. This conduct served no purpose other than to delay the finalisation of the matter.
- (iv) **Reliance on Unmeritorious Points:** The Respondents' opposition to the costs is founded on a series of technical, unmeritorious points *in limine* which have no prospect of success. Pursuing a defence that is devoid of merit can, in itself, be considered unreasonable.

[18] The Respondents' conduct, viewed in its totality, is unreasonable and vexatious. They were wrong in their initial conduct, and they have been wrong in

²⁶ *F.B v J.B* [2024] ZAGPJHC 1003 (25 September 2024) at para [46].

²⁷ *Hlatshwayo and Another v Road Accident Fund* 2023 ZAMPMBHC 2 at paras [1], [45]-[46].

their conduct of the ensuing litigation. They have put the Applicant to considerable and unnecessary expense to enforce its rights and then to recover the costs associated with that enforcement. This is a clear case where the Court must exercise its discretion to ensure that the Applicant, as the successful party, is properly indemnified for its legal expenses.

Conclusion

[19] For the reasons set out above, I am satisfied that while condonation should be granted in the interests of justice, the Respondents' conduct throughout this litigation warrants a punitive costs order against them.

ORDER

[20] Accordingly, I make the following order:

1. Condonation is granted for the late filing of the First and Second Respondents' answering affidavit.
2. The First and Second Respondents are ordered to pay the Applicant's costs of the application, jointly and severally, the one paying the other to be absolved, on the scale as between attorney and client.

WJ ROOS AJ

ACTING JUDGE OF THE HIGH COURT

This Judgment was handed down electronically by circulation to the parties' and or parties' representatives by email and by being uploaded to CaseLines. The date and time for the hand down is deemed to be 10h00 on this date day of Month year.

Appearances

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Date of Hearing:	17 August 2026
Date of Judgment:	28 August 2026