**IN THE HIGH COURT OF SOUTH AFRICA**

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| REPORTABLE: | **NO** |
| OF INTEREST TO OTHER JUDGES: | **YES** |
| REVISED: | **NO** |
| Date: Signature: | 31 MARCH 2022 |

**CASE NO: 17/2588**

**DATE: 30 MARCH 2022**

In the matter between:

**TWALA, GRACE DUDUZILE** Defendant/Applicant

and

**ABSA BANK LIMITED** Plaintiff/Respondent

**Coram:** **MACHABA AJ**

**Heard on:** **23 AUGUST 2021**

**Delivered:** **30 MARCH 2022**

**Summary:**

***Application for Costs***: *Applicant seeks costs from the Respondent after the Respondent withdrew an action against the Applicant without tendering costs. The Respondent avers that it was entitled to withdraw the action after the Applicant had paid the Respondent an amount owed to it thus acknowledging payment.*

***Held***: *The issue of costs is regulated by the Uniform Rules of Court, particularly rule 41. The Respondent unreasonably allowed the matter to drag on till 2020 when on its own version, the debt was purged in 2017. The Respondent could and should have withdrawn its action in 2017 and argue whatever it wished to argue in re costs. However, in allowing the matter to remain pended for no apparent or discernible reasons, it allowed the Applicant to run the costs up.*

*The Applicant is also not an innocent party in this matter. Subsequent to the launching of an action by the Respondent, she paid the amount demanded. She contended that she paid same under protest. However, she has done nothing to recover such payment. She was also informed, few months after the launch of the Respondent's action still in 2017 that she has subsequently paid her arrear debt; her account was reinstated; and that the Respondent will no longer be proceeding with its claim. This notwithstanding, she ran the matter and sought to force the Respondent to participate in a dead matter.*

*Furthermore, the Applicant had a cost order made in her favour following the postponement of a summary judgment application launched by the Respondent. The Respondent did nothing to progress the said application until it withdrew the matter. However, the Applicant pestered the Respondent to set the application down, and even filed a supplementary affidavit resisting that summary judgment.*

*The Court found both to be blameworthy for the matter to have dragged on for this long and ordered each party to pay its own costs.*

**Delivered**: This judgment was handed down electronically by circulation to the party and or her representatives via email and caseline and released to SAFLII. The date and time for hand-down is deemed to be 10h00 on 30 March 2022.

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**ORDER**

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1. The Applicant's application is dismissed;

2. Each party is ordered to pay its costs.

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**JUDGMENT**

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**MACHABA AJ**

*"[1] It is indeed the lofty and lonely work of the Judiciary, impervious to public commentary and political rhetoric, to uphold, protect and apply the Constitution and the law at any and all costs."*[1]

**INTRODUCTION**

[1] In this application, the Applicant instituted an application against the Respondent in terms of which she seeks the Respondent to pay the Costs of an action that the Respondent withdrew against the Applicant without tendering the costs thereof. This is an application in terms of rule 41(c) of the Uniform Rules of Court.

[2] The Applicant's attorney who deposes to the founding affidavit on behalf of the Applicant avers that in 2017, the Respondent issued what he refers to as excepiable summons. Immediately upon receiving this summons, the Applicant instructed him to place her case before the Respondent so as to avoid the latter proceeding to summary judgment.

[3] Despite the Applicant's timeous approach, the Respondent launched an application for Summary Judgment. Despite an affidavit that ought to have persuaded the

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[1] Secretary of the Judicial Commission of Inquiry into Allegations of State Capture, Corruption and Fraud in the Public Sector including Organs of State v Zuma and Others [2021] ZACC 18.

Respondent to withdraw its application for summary judgment, the Respondent proceeded to have the matter set down for argument. The matter was heard on 31 March 2017 and after argument, the application for summary judgment was postponed *sine die* and the Respondent was ordered to pay the costs of that application.

[4] Notwithstanding the postponement, the Respondent did not amend or withdraw its application. The matter appears to have proceeded with discovery being reached and demanded by the Applicant in 27 June 2017. Nothing was discovered.

[5] The Respondent did not amend or withdraw its particulars of claim.

[6] In 22 September 2017, the Applicant's attempted to tax the bill of costs emanating from the above summary judgment application. In opposing the Respondent argued that the said application was not completed and taxation could not proceed. the hearing was set down for 18 January 2018 and the taxing master was accepted by the taxing master.

[7] During 15 February 2018, the Defendant filed a rule 30A complaining that the Respondent has failed to pursue the Summary Judgment and or the action it claimed was alive.

[8] The Applicant then on 24 April 2018, took the initiatives of setting the summary judgment application down. It appears as if by agreement between the parties, the Applicant was granted leave to defend, and costs in the cause.

[9] On 5 December 2019, the Applicant served the Respondent with a notice of re-enrolment of the taxation in respect of the 2017 summary judgment application that was postponed with the Respondent being ordered to pay the costs.[2]

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[2] As it will be clear later, by this time, the Respondent's attorneys had already informed the Applicant that the Applicant had settled her arrears, her account was reinstated and the Respondent no longer persists with the action.

[10] The attorney states that in response to the re-enrolment notice, the Respondent served the Applicant with a Notice of Withdrawal of the action but failed to tender the costs of the action.

[11] The Applicant contends that the costs of the action (excluding the costs of the postponement of the summary judgment application of 2017) remains payable and the Respondent must shoulder such liability. She demands costs on a scale as between and client because (i) the Respondent also demanded same without basing same on a contract; (ii) the amount demanded by the Respondent fell within the Magistrate's Court's scale and yet the Respondent brought the matter in the High Court; (iii) the Respondent refused repeated requests to withdraw its action or amend its papers. It refused to respond to the Applicant's notices in curing the defect that appeared on the Respondent's conduct. Various letters that the Applicant directed to the Respondent and which were not responded to, the recent being in 2020, were annexed to the application herein.

[12] Further, in an effort to have the matter resolved, the Applicant proposed that in the event that the matter proceeds on an unopposed basis, the Court should grant an order of costs taxable on a party-and-party scale.

[13] The Respondent opposes this application.

[14] In its response, the Respondent raised a preliminary argument that the 2017 costs of summary judgment were taxed and paid. It does not say when where this payment made and there is not proof annexed to its affidavit to prove this payment.

[15] The Respondent admits that nothing was done in this matter until 16 January 2020 when it withdrew the action.

[16] The Respondent argues that the Applicant's account was reinstated because the Applicant had settled her arrears on the said account. The Respondent then

contended that the application for costs, was frivolous, malicious, unreasonable and an abuse of Court process.[3]

[17] The second preliminary objection was that the affidavit founding this application was deposed to by an attorney and had no confirmatory affidavit by the Applicant. It contended that this was not some procedural application but an application *in rem* and *in personam* to the Applicant and that without evidence of cession thereof, the Applicant should have been the one deposing thereto.

[18] The Respondent contended that it was not clear whether the application was driven by the attorney or the Applicant who was not entitled to those costs. It argued that there was no explanation why the attorney deposed to the said founding affidavit.

[19] On the merits, the Respondent submitted that the Applicant defaulted on her mortgage loan entitling it to issue the summons when it did. It claims to have relied on section 86(10) of the National Credit Act, Act No. 34 of 2005 ("NCA"),[4] on the belief that the Applicant had already commenced with debt review process. This was, it submits, was confirmed.

[20] There appears to be an organisation called DC Clinic a debt counsellor which on 17 January 2014 sent our notices to the Applicant's creditors indicating, in terms of the relevant regulation, that a debt review process had commenced. Soon thereafter, the said DC Clinic purported to terminate the said review owing to the fact that the Applicant had not paid the fees. The Applicant contends that the letter by the DC Clinic was defective in that the latter could so act and the Act and regulations did not allow for the course proposed by DC Clinic. The Respondent pointed to section

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[3] On the information before me, the Applicant was informed in 2017 already that the Respondent no longer intends to proceeds with the action.

[4] Section 86(10) of the Act which provides as follows:
"If a consumer is in default under a credit agreement that is being reviewed in terms of this section, the credit provider in respect of that credit agreement may give notice to terminate the review in the prescribed manner to –
(a) the consumer;
(b) the debt counsellor; and
(c) the National Credit Regulator, at any time at least 60 business days after the date on which the consumer applied for debt review."

88(10) of the NCA in support hereof except that there is no such a section in the NCA as section 88 has only five subsections.

[21] The Respondent suggests that the order by Acting Justice Senyatsi pertaining to section 130(4)(b) of the NCA was premised on the Applicant not disclosing all material facts to the Court relating to the debt review. It contended that this Court should take a dim view of the Applicant's case. Acting Justice Senyatsi had postponed the Respondent's application for summary judgment and mulcted the Respondent with costs, apparently, for not serving the Applicant with a section 129 Notice as provided for in the NCA.

[22] The Respondent contended that the Applicant capitulated from her defences which were raised in the summary judgment application and, at some point, settled her arrears with the Respondent. She paid the arrear directly to the Respondent without any reservation of her rights. It further submitted that, by operation of law, the Applicant's account was reinstated.

[23] The Respondent claimed, in counter to the Applicant's accusations, that it was entitled to have issued the summons against the Applicant, and due to the fact that the Applicant indicated that she would have engaged the Respondent upon receipt of the section 130 notice, it was prudent of it not to seek costs against her when it withdrew its action against her. in other words, it appears that the Respondent regrets rushing to Court.

[24] The Respondent submits that the Applicant admitted being in arrears, and since section 129 notice could be issued even after summons was issued, and given the fact that in this case, same was not issued before the issuance of the summons, it was of the view that a just and equitable order to make was for each party to pay its costs. It submits that it had tendered this proposal in its notice of withdrawal.

[25] The Applicant submits that on 26 September 2017, it informed the Applicant that her account had been reinstated due to the fact that the Respondent had purged her arrears.

[26] When the Applicant supplemented her affidavit resisting summary judgment on 14 February 2018, the Respondent responded the following day and stated that the matter had become moot as the Applicant had already purged her arrears, the cause of action had fallen away. The Respondent states that it informed her that action would not be proceeded with. The Applicant's attorney sent another letter which, the Respondent claims confounded the issues.

[27] It must be fair that if she was told that the matter would not be proceeded with, then the matter indeed became moot then. The question is what if the letter of 15 February 2018 did not say anything on no proceeding with the matter. In any event, the Respondent argued that it was entitled to institute the action when it did and its position was vindicated by the Applicant admitting liability and purging her arrear payment. If so, the Applicant could not proceed with the matter beyond that letter. If she was told the action was done, then the steps beyond was an overreach.

[28] The Respondent contents that there was no need to make a tender of the summary judgment as same was made the day of the postponement. This is correct and I do not understand her to be seeking those costs.

[29] The Respondent suggests, *ex post facto* that the costs order granted against it ought not to have been made against it as the said order was granted in circumstances where the Applicant did not deserve the postponement of the summary judgment and or the leave to defend as she had already at that stage commenced with debt review process and the Respondent was entitled to terminate same. I note that the Respondent also did not do anything to bring its complaint to rescind, appeal or set aside the order of summary judgment costs to Court.

[30] The Respondent rejected the Applicant's defence that she made her arrear payments "under protest", and contend that she did nothing to follow through her claim.

[31] The Respondent contends that the summary judgment application ought not to have been proceeded with as the Applicant was awarded the costs thereof. In my understanding, the costs awarded were that of the postponement thereof. It is not usual unless the Court demonstrates its displeasure with the conduct of a party that

costs are awarded at the summary judgment stage. However, the Court was satisfied that the Respondent was to be settled with the costs of a postponement. That did not mean that the application was disposed of.

[32] Furthermore, the Applicant contended that the Respondent agreed with her when the Applicant re-enrolled the and leave was granted with costs in the cause. This is rather strange of the Respondent to have consented to this in view of the stance it now takes. The Respondent contends that the re-enrolment was also moot given the fact that the Applicant had purged her indebtedness of the arrears.

[33] The Respondent contends that the withdrawal of the matter was occasioned by its need to launch another action as the Applicant had fallen into arrears again.

[34] The Respondent submitted that nothing substantive was done in this matter. There was no plea filed by it. The only work done was the rule 30A notice and 35(12) by the Applicant. It contents those would have been the costs incurred by the Applicant's lawyer.

[35] The Respondent seeks that the application be dismissed with punitive costs or with costs as to the scale as between attorney and client.

[36] In reply the Applicant confirmed her mandate to her attorney and laments, as this Court does, the fact that the Respondent sued the Applicant for an amount of less than R10,000.00, which could have been done at her nearest Magistrates' Court.

[37] The Applicant remonstrated the hurt and disrespect that she experienced at the Respondent's hands in expecting that she would pay any amount not properly particularised in their summons. She contended that she had a defence on the merits of the case and did raise same in her answering affidavit. Whatever, said or done, the Applicant has paid the amounts claimed by the Respondent.

[38] Despite a lot of argumentative replying affidavit, the Applicant admits that her costs of the summary judgment were paid. She simply points out that they were paid by the Respondent's attorneys and not the Respondent. I find this neither here nor

there. What is in issue is whether or not she was reasonable in pressing for further litigation beyond the summary judgment postponement.

[39] The Applicant suggests that it is the Respondent who abused the process in that they have deliberately kept the matter hanging without finalising it and using that status as and when it suits them. For example, the Respondent was able to argue in the summary judgment application that the matter was alive and should proceed. It even consented to the Applicant being granted leave to defend. The question is if the matter was at an end as it contended in 2017, why did it not there and then withdraw the matter and argue the costs as is the case now. Why grant leave to defend where there is no *lis* between the parties.

[40] This, the Applicant supports by a consent order that the Applicant be granted leave to defend. On the other hand, the Respondent was able to argue, in opposing the Applicant's contention that the matter should proceed to finality, that the matter is moot in light of payment of the debt. The Respondent refused or failed to withdraw the action. I also have seen at least, evidence of the use of mootness when the Applicant demanded that the matter be finalised.

**ISSUE TO BE DETERMINED**

[41] Having traversed the facts and the affidavits filed of record, I am of the view that the issue before me is whether or not the Respondent was wrong in not tendering costs when it withdrew its action against the Applicant; and whether or not the Applicant was unreasonable in pushing for the action to be proceeded with when she was informed in 2017 that the action would be pended.

[42] It should be recalled that the Respondent relied *inter alia* on mootness of the matter after the Applicant had purged herself of the arrears she owed to it.

[43] However, this withdrawal came more than two years after the Applicant had made payment of the arrears and the Respondent having reinstated the Applicant's account.

**APPLICABLE LEGAL PRINCIPLES ON COSTS**

[44] It is common cause that Rule 41 deals with, amongst others, the withdrawal of proceedings. In terms of Rule 41(1)(a) a plaintiff such as the respondent herein may at any time before the matter has been set down withdraw the proceedings without the consent of the other parties or the Court. The consent of the other parties or the leave of the Court is required after the matter has been set down for hearing.

[45] Since the pleadings had closed, Rule 41(1)(a) of the Uniform Rules of Court ("the Rules") becomes applicable. This Rule provides as follows:

*"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 events he shall deliver a notice of withdrawal and may embody in such notice a consent to pay costs; ..."*

[46] A matter is withdrawn by delivering a notice of withdrawal in which may or may not be included a tender for costs by the withdrawing party.

[47] The jurisdictional prerequisite for the application of Rule 41(1)(c) is the delivery of a notice of withdrawal.

[48] Rule 41(1)(c) provides that if a notice of withdrawal does not contain a consent to pay costs, the receiving party may apply to Court for a costs order.

[49] The wording of Rule 41(1)(a) is clear, with the effect that once a matter has been set down for hearing, it is not competent for a party who had instituted proceedings to withdraw such proceedings without the consent of the other parties or with the leave of the court. Without such consent or leave, a purported notice of withdrawal is "*incompetent and invalid and must be set aside*", as held ***in Protea Assurance***

***Co. Ltd v Gamlase and Others*** 1971 (1) SA 460 (E) at 465 G and ***Reuben Rosenblum Family Investments (Pty) Ltd and Another v Marsubar (Pty) Ltd (Forward Enterprises (Pty) Ltd and Others Intervening)*** 2003 (3) SA 547 (CPD) at 549 H.

[50] In ***Pearson and Hutton NN.O. v Hitzeroth and Others*** 1967 (3) 591 (ECD) the Court held that (at 594H): "*[t]he question of injustice to the respondents is naturally germane to the exercise of the Court's discretion under Rule 41(1)…*". In ***Karroo Meat Exchange Ltd v Mtwazi*** 1967 (3) SA 356 (CPD), the Court had this to say:

*"In the first place it seems to me important that the judicial officer should be in control of proceedings in his court. Once the case has been set down for hearing the court has an interest to see that justice is done both in regard to the merits of the dispute and in regard to costs. When the case has progressed to the stage of being set down for hearing, the parties can no longer do as they please. The court cannot be deprived of its control merely by reason of the fact that the plaintiff has served a notice of withdrawal. In the second place it seems to me wrong, in principle, that the plaintiff having initiated the proceedings and put his opponent to inconvenience, trouble and expense, should, subject only to the payment of costs, at his mere whim have the right to withdraw the action at any time before the hearing."* Emphasis mine.

[51] It is common cause that in exercising its discretion, a Court must do so with great caution. I agree. In ***Levy v Levy*** 1991 (3) SA 614 (AD), it was held (at 620B):

*"It is after all not ordinarily the function of the Court to force a person to institute or proceed with an action against his or her will or to investigate the reasons for abandoning or wishing to abandon one. An exception, though one difficult to visualise, would no doubt be where the withdrawal of an action amounts to an abuse of the Court's process." Emphasis mine.*

[52] The above Court then went on to quote from ***Hudson v Hudson and Another*** 1927 AD 259, where it was held per De Villiers JA:

*"Where... the Court finds an attempt made to use for ulterior purposes machinery devised for the better administration of justice it is the duty of the Court to prevent such abuse. But it is a power to be exercised with great caution, and only in a clear case."*

[53] Therefore, the general rule is that a litigant who withdraws an action must pay the defendant's costs unless *"very sound reasons exist why the defendant should not be entitled to costs."* This Court further draws from the authority of ***Germishuys v Douglas Besproeiingsraad*** 1973 (3) SA 299 (NC); ***Wildlife and Environmental Society of South Africa v MEC for Economic Affairs and Tourism. Eastern Cape and Others*** 2005 (6) SA 123 (ECD).

[54] It was however held in ***Reuben Rosenblum Family Investments (Pty) Ltd and Another v Marsubar (Pty) Ltd*** 2003 (3) SA 547 (C) that it is only in "exceptional circumstances" that a defendant will not be entitled to all the costs where a plaintiff withdraws an action.

**APPLICATION OF THE PRINCIPLES TO THE FACT OF THIS CASE**

[55] It appears to me that the Applicant was not willing to allow the matter to die its natural death. This is the reason a matter that was practically dead in September 2017 was somehow kept alive till 2020 when the Respondent withdrew the action against the Applicant.

[56] I find that this matter has a lot of facts that could easily justify a censure on either side. This is because of the fact, on the one end, that the Applicant herself conceded, whether she likes it or not, to the Respondent's claim and has subsequently paid what was claimed by the Respondent. She contends that she paid under protest to avoid litigation. This appears in the replying affidavit. However,

the Respondent is correct in arguing that there is no evidence that she has done nothing to recover what she claims was paid under protest.

[57] Furthermore, the Applicant was informed in 2017 already that the Respondent does not wish to proceed with litigation. Instead of letting sleeping dogs lie, the Applicant poked the matter and the Respondent and, in the process, incurred costs which she now wants from the Respondent.

[58] On the other hand, the Respondent was not entitled, after it had been paid the said arrear monies, and after it reinstated the account, to have kept this matter on the roll for this long. I still cannot find a reason why the Respondent did not withdraw its action as soon as the Applicant had purged her debt and her account was reinstated. This should have happened in 2017, whether or not the Applicant opposed that move. The Respondent was further entitled to approach a Court and seek formal leave to withdraw and argue its case on costs then. Around this time, I surmise that its case would have carried more weight.

[59] However, the above did not happen and the Applicant kept pushing for finalisation thereof which process dragged on till 2020. In answer, the Respondent hung on to its tripartite position (*(i) the action was alive; (ii) the application for summary judgment was alive and would be proceeded with; and (iii) the action was moot*) which were beneficial to it depending on who was asking questions.

[60] On the facts before me, I allocate blame to both the Applicant and the Respondent for the matter to reach the stage where it did.

[61] In short, I note that the Applicant paid the amount it paid after summons were issued. This was in 2017. Despite characterising such payment as being payment under protest, there is no evidence that she did anything thereafter to recover the payments made under that condition. The Respondent was thus entitled to allocate those funds to where the arrears were and to reinstate the account soon after payment and reinstate the account.

[62] What the Respondent was not entitled to do was to keep the matter hanging so that it could play swinging games and argue any of the three positions identified by the

Applicant in its email of 15 February 2018 as and when the shoe pinched. The tripartite positions were (i) the action was alive; (ii) the application for summary judgment was alive and would proceed; and (iii) the action was moot. This was indeed an abuse of process and should be discouraged.

[63] With the Applicant, one could argue that the Applicant, sought to obtain an advantage relating to the costs of what was inevitable – i.e. the withdrawal of the entire action against her. She thus demanded that the Respondent withdraw the matter and tender costs or proceed to participate in a matter where the latter had stated that same would not be proceeded with. She did so because, on the one hand, she had hoped to obtain costs of the withdrawal, and on the other hand, with a view to stop the Respondent's opportunistic reliance on any of the three positions it had, by not finalising the matter, and depending on who asked it.

[64] The Respondent gambled with the Applicant by keeping the latter in limbo and the matter remaining alive when in effect, it knew that it no longer had the appetite to pursue same. In doing so, the Respondent benefitted for a while when it dragged the matter till 2020 instead of ending same in 2017 by withdrawing same and tender the associated costs thereof; or argue that it should not pay any costs. Indeed, these routes were available to it and could have been meaningfully entertained then.

[65] In the alternative, the Respondent ought to have known that the costs of the summary judgment application of 2017 were non-existent by then because the Court had just postponed same and made an order of costs against it. Instead, the Respondent chose to hang on to its tripartite positions that unreasonably and unnecessarily favoured the continued existence of this matter on the Court's roll.

[66] This Court finds that, with regard to the costs of the summary judgment application, the final leg of that application appears to have died a natural death when the Respondent withdrew its action. However, this occurred long after the Respondent had countenanced the Applicant's supplementary affidavit in the summary judgment application and granted her leave to defend. That conduct, I find, has attracted an obligation to pay for those costs.

[67] The Respondent argued in its heads of argument that for reasons that had to do with the debt review processes that the Applicant may have commenced and dropped midstream, that the Applicant should not have been entitled to the costs of that application. This is strange a submission in that it is not clear whether the Respondent seeks, in hits heads or on these papers, to appeal that Court's order on the costs or that this Court set aside the said Order. The Respondent has not done anything to have that order set aside and it is not for this Court to interfere therewith. Further strangely and bizarrely, the Respondent seeks, in its heads of argument, that this Court order a refund of those costs. I shall ignore this invitation.

[68] The observation that the summary judgment application has died a natural death comes after the Respondent withdrew its action and after the Applicant had supplemented its answering affidavit, and the Respondent had consented to granting the Applicant leave to defend.

[69] In so doing, the Respondent countenanced and legitimised the Applicant's action to supplement those papers in circumstances where, in the Respondent's own view, the matter was effectively at an end.

[70] If the Respondent earnestly believed otherwise, it should have set the matter down to have the said costs be dealt with and to expose what it says are the Applicant's lies regarding the debt review issues it discovered against the Applicant.

[71] The Respondent failed to deal with these costs earlier. It instead, sought to benefit from its strategy of pending all these things until in the end when it withdraws all of them.

[72] With the Applicant, much has already been said. It was unnecessary and unreasonable, after she was informed in 2017 that the Respondent no longer wishes to proceed with the matter for her to press for further participation in the matter and to do or issue processes that would attract costs. She sought to take advantage of the possible cost order and as such engaged in an unreasonable exercise.

[73] In light of all these unreasonable conducts by these parties, I find that it would be unfair and unjust to apportion a burden of the costs of this action on anyone.

[74] Accordingly, this Court will order that each of the parties be liable to pay for their own costs.

**CONCLUSION AND COSTS**

[75] Having found that the parties should not conducted themselves in the manner set out above, leading to the matter dragging on till January 2020, it follows that the Applicant's application must fail.

[76] In this case and on the facts before it, this Court could find reasons to depart from the norm in respect of the cost order.

[77] The parties asked for punitive costs against each other. As stated above, this Court has seen and cited numerous conducts worthy of this Court's sanction, but it shall exercise its discretion against that kind of an order and order each party to pay its own costs.

**ORDER**

[78] Having considered the circumstances of this case and the documents placed before this Court, I make an order in the following terms.

1. The application by the Applicant is dismissed;

2. Each party is ordered to pay its own costs.

***It is so Ordered.***

***T J MACHABA***

*Acting Judge*

*Gauteng Local Division*

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| HEARD ON: | 23 AUGUST 2021 |
| DATE OF JUDGMENT: | 30 MARCH 2022 |
| FOR THE APLICANT: | MATTHEW WEBBSTOCK |
| INSTRUCTED BY: | J C VAN DER MERWE ATTORNEYS |
| FOR THE RESPONDENT: | CHARLES E. THOMPSON |
| INSTRUCTED BY: | STRAUSS DALY INC. |