IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

Case number: 2025-006136
Date of hearing: 25 August 2025
Date delivered: 4 September 2025

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

4/9/25
DATE SIGNATURE

In the application between:

THE AUDITOR-GENERAL OF SOUTH AFRICA	**First Applicant**
DEPARTMENT OF TRADE, INDUSTRY AND COMPETITION	**Second Applicant**
THE NATIONAL LOTTERIES COMMISSION	**Third Applicant**
THE COMMISSIONER OF THE NATIONAL LOTTERIES COMMISSION N.O.	**Fourth Applicant**
THE MINISTER OF TRADE AND INDUSTRY	**Fifth Applicant**

and

NOMPUMELELO NENE	**Respondent**

JUDGMENT

SWANEPOEL J:

[1] This is an application in terms of rule 41 (1) (c), in terms of which the applicants seek an order that the respondent should pay the applicants' costs arising from a review application that the applicant launched on 24 January 2024, and withdrew on 2 April 2025.

[2] It is, firstly, important to briefly explain the nature of the review application, as it has an impact on the costs order that I intend to make. The respondent was previously employed by the third applicant ("the NLC") as its company secretary. The first applicant conducted an audit of the NLC's affairs for the period 31 March 2020 to 31 March 2021. It concluded that numerous irregularities had occurred in the financial affairs of the NLC.

[3] Although the report did not impugn her personally, the respondent was, on her own version, accused by the NLC of having deviated from its procurement procedures, and suspended from her position, She was charged with 145 counts of misconduct. Shortly before the disciplinary enquiry was to commence, the respondent sought a postponement of those proceedings on the grounds that a review application was pending in this court that might affect the disciplinary proceedings. The respondent then launched these proceedings on the same day that she sought a postponement of the disciplinary proceedings.

[4] The review application was cast in broad terms. The respondent sought to review and set aside the first applicant's reports for the 2018, 2020 and 2021 financial years. She sought a declaratory order that the NLC had not committed any irregular expenditure. The respondent also sought to set aside the TSU report, alternatively, that an order be granted that the judgment in the review application be taken into account in the disciplinary hearing. Moreover, the respondent sought an order that the NLC must comply with a request for information in terms of the Promotion of Access to Information Act, 2 of 2000.

[5] On 23 January 2025 the respondent resigned from the NLC, preventing the continuation of the disciplinary proceedings. On 30 January 2025 he first applicant's attorney sought clarity from the respondent as to her intentions with the review application, given her resignation from the NLC. No response was forthcoming and on 6 February 2025 the first applicant again made the same enquiry. The respondent's attorneys advised that they did not have instructions from their client. As a result, on 21 February 2025 the first, third and sixth applicants filed their answering affidavits.

[6] There was no further response forthcoming from the respondent until she withdrew the review application on 2 April 2025 without making a tender for costs. The first applicant's requests that the respondent should tender costs fell on deaf ears. On 26 May 2025 the Deputy Judge President directed that the rule 41 (1) (c) application would be heard on 25 August 2025. Time periods were set in his directive for the filing of the

rule 41 (1) (c) application and for the respondent's answering affidavit. The respondent opposed the application for costs, but did not deliver an answering affidavit. Instead, at 23h46 on the night before the matter was to be argued, the respondent withdrew her opposition to the costs application, but only on condition that the applicants may not demand costs from her. The respondent said and that the applicants should pursue costs against an insurer that was allegedly required to indemnify employees of the NLC in respect of costs orders granted against them pursuant to their employment with the NLC.

[7] It is against the above factual backdrop that the applicants seek costs on an attorney/client scale against the respondent personally. The respondent has agreed to the applicant's order, albeit conditionally. Two issues remain. Firstly, whether the respondent should be mulcted with punitive costs, and, secondly, whether the costs order should be subject to the respondent's condition that the applicants must pursue the costs against the insurers.

[8] I am mindful of the fact that punitive costs are not lightly granted. Courts are slow to punish a litigant who seeks a determination by a court of a complaint that he or she may have.[1] In *Public Protector v South African Reserve Bank (supra)* the Court said[2]:

> "Both personal and punitive costs are extraordinary in nature and should not be awarded 'willy-nilly', but rather only in exceptional circumstances."

[9] The Court explained further[3] that an attorney/client costs order would be appropriate if it is unfair for a party to bear any of the costs of the litigation. In the past courts have awarded attorney/client costs in instances where the manner in which the matter was conducted constituted an abuse of process. One such case was *Law Society of SA and Others v Road Accident Fund and Another*[4] in which the Road Accident Fund attempted secretly to implement a payment system in terms of which payments were made to victims of road accidents directly, in order to avoid having to pay the attorneys acting for the claimants, despite there being a pending review of the decision to implement the payment system.

[10] The court held that the decision to implement the system secretly was an attempt to thwart any attempt to have the decision reviewed and set aside. The Court expressed its displeasure with the RAF's conduct by granting a punitive costs order.

[11] The applicants have submitted that the review application was brought solely in order to justify a postponement of the disciplinary proceedings. The timing of this application, which was brought on the very day on which the postponement was sought, suggests that the applicants' suspicions are correct. Their suspicions are fortified by the respondent's conduct after she launched the review proceedings.

[12] Despite numerous requests from the applicants to indicate whether she intended to pursue the application, the respondent remained silent,

which forced the applicants to incur unnecessary costs to file answering papers. The respondent persisted with the application notwithstanding the fact that the applicants had taken the point, which in my view is unassailable, that the respondent did not have locus standi to seek the review of the reports. She persisted with the application for months, even after a court in a judgment in an interlocutory application in which the applicant sought the disclosure of documents, made the remark, albeit *obiter*, that the Court could not fathom how the respondent could possibly have locus standi to bring the review application.

[13] For months the respondent remained supine, eventually forcing the applicants to file papers. Once the respondent had had sight of the answering papers, she withdrew the application without tendering costs. That forced the applicants to approach the Deputy Judge President to seek a directive as to the further continuation of the matter. The respondent proceeded to note her opposition to the rule 41 (1) (c) application, but she then ignored the directive in respect of the filing of opposing papers. Only at 23h46 on the evening before the matter was to be heard did the respondent withdraw her opposition, and then only conditionally. That resulted in the applicant's counsel being forced to appear to argue the case, with the resulting costs implications.

[14] In light of the respondent's conduct, her abuse of the processes of court, and the fact that there was no merit whatsoever to the review application, I believe that it would be appropriate to grant punitive costs.

[15] As far as the respondent's insistence that the applicants should pursue costs through the insurance company is concerned, not much has to be said. The costs liability is that of the respondent personally. There is no reason why the applicants should be precluded from seeking the costs from her personally. There is also no basis to require the applicants to approach a third party for payment, who may or may not agree to indemnify the respondent. If the respondent is able to secure an indemnification from the insurer, that is to her benefit, but the applicants are entitled to pursue the payment of costs from her personally.

[16] I make the following order:

> **[16.1] The respondent (the applicant in the main application) shall pay the applicants' costs in the review application and in the rule 41 (1) (c) application personally, on the attorney/client scale, which costs shall include the costs of senior counsel and junior counsel, where so employed.**

SWANEPOEL J
JUDGE OF THE HIGH COURT
GAUTENG DIVISION PRETORIA

Counsel for the first applicant:	**Adv. P Pretorius SC**
Instructed by:	**Fairbridges Wertheim Becker**

Counsel for the third and sixth applicant:	**Adv. L Peter**
For respondent:	**No appearance**
Instructed by:	**Cheadle Thompson & Haysom Inc**
Hearing on:	**25 August 2025**
Judgment on:	**4 September 2025**

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[1] Ward v Sulzer 1973 (3) SA 701 (A) at 708 E; Public Protector v South African Reserve Bank 2019 (6) SA 253 (CC)
[2] At para [220]
[3] At para [221]
[4] Law Society of SA and Others v Road Accident Fund and Another 2009 (1) SA 206 (C)