

REPUBLIC OF SOUTH AFRICA



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

- (1) REPORTABLE: NO
(2) OF INTEREST TO OTHER JUDGES: NO
(3) REVISED.

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Name: FARBER AJ Date: 13 October 2023

CASE NUMBER: 16767/2022

In the matter between:

TOTAL SOUTH AFRICA (PTY) LTD

PLAINTIFF

and

DOWRAJ SERVICE STATION CC

FIRST DEFENDANT

YESHMIN HARDUTH

SECOND DEFENDANT

JUDGMENT

FARBER AJ:

[1] At the commencement of the hearing counsel on behalf of the Plaintiff withdrew its application for summary judgment. He submitted that the costs of the application ought to be reserved. Counsel on behalf of the Defendant submitted that it was entitled to the costs of the application.

[2] It is well settled that on the withdrawal of proceedings by a litigant, he is to be considered as having been unsuccessful in those proceedings and thus liable for his adversary's costs. The Court nonetheless retains its discretion to proclaim otherwise (see *Waikiwi Shipping Co Ltd v Thomas Barlow and Sons (Natal) Ltd* 1078 (1) SA 671 AD and *Waste Products Utilisation Pty Ltd v Wilkes* 2003 (2) SA 590 (W)).

[3] I see no reason why I should not apply the general rule. I am in a position to determine the question of costs and there is no reason why this should be left to another Court on some future date. In short the Plaintiff has not advanced cogent reasons the reservation of the costs.

I thus decree that the costs of the summary judgment application are to be paid by the Plaintiff.

G Farber
ACTING JUDGE OF THE HIGH COURT

Date of Hearing: 11 October 2023

Date of Judgment: 13 October 2023

APPEARANCES

For the Plaintiff: Adv R Petersen

Instructed by: Kapditwala Incorporated t/a Dentons

For the Defendants: Adv J Karuaihe

Instructed by: Des Naidoo & Associates