



**SUPREME COURT OF APPEAL OF SOUTH AFRICA
JUDGMENT**

**Case No: 469/2013
Not Reportable**

In the matter between:

AFRIFORUM

APPELLANT

and

THE MINISTER OF TRADE AND IDUSTRY

FIRST RESPONDENT

**THE MINISTER OF CO-OPERATIVE GOVERNANCE
AND TRADITIONAL AFFAIRS**

SECOND RESPONDENT

**THE SOUGHT AFRICAN LOCAL GOVERNMENT
ASSOCIATION**

THIRD RESPONDENT

Neutral citation: *Afriforum v The Minister of Trade and Industry* (469/13) [2013] ZASCA 184
(29 November 2013).

Coram: Malan, Wallis JJA et Meyer AJA

Heard: 28 November 2013

Delivered: 29 November 2013

Summary: Application in terms of rule 11(1)(b) of Supreme Court of Appeal rules to dispose of appeal without hearing on merits - dismissal of appeal.

ORDER

On appeal from: North Gauteng High Court, Pretoria (Victor J sitting as court of first instance):

In the result the appeal is dismissed with costs from after the service of the notice of abandonment.

JUDGMENT

Malan JA (Wallis JA and Meyer AJA concurring):

[1] This an application in terms of rule 11(1)(b) of the rules of this court for the disposal of an appeal against the judgment and order of Victor J in the North Gauteng High Court without a hearing on the merits thereof. The applicant, Afriforum, is the appellant in the appeal and seeks the following relief:

‘1 That the order of the Court below be set aside and substituted with the following order:

‘1.1 Government Gazette 221 of 14 March 2011 published in Government Gazette No 34116 is reviewed and set aside.

1.2 Government Gazette 898 of 31 October 2011 published in Government Gazette No 34724 is reviewed and set aside.

1.3 The First Respondent and Second Respondents are ordered to pay the applicant’s costs, inclusive of the costs of two counsel.

2 The First and Second Respondents are in terms of the Notice of Abandonment ordered to pay the costs of the application for leave to appeal in the Court a quo and the prosecution of the appeal up to the date of service of the Notice of Abandonment, such costs to include the costs of two counsel.

3 The First and Second Respondents are ordered to pay the costs of this application.’

[2] The appeal by the applicant is against parts of the order of the court below dated 12 March 2013. That order reads:

'1 Government Notice 898 of 31 October 2011 published in Government Gazette 34724 is reviewed and set aside.

2 The setting aside will take effect within 30 days of this order.

3 The first respondent is directed to publish a notice as contemplated in item 23(b)(1) of schedule 2 of the Consumer Protection Act 68 of 2008 by no later than 31 July 2013 listing each and every municipality in respect of which sections 8 - 10 and 53 - 61 of the said Act should be deferred.

4 Each party is to pay its own costs.'

[3] On 17 September 2013 the First and Second Respondents served a notice of abandonment of paragraphs 2 and 3 of the order of the court below on the applicant's attorneys. The third respondent did not take part in the proceedings in the court below. The first and second respondents, in addition, tendered to pay the appellant's costs of the application for leave to appeal as well as the costs of prosecuting the appeal up to the date of service of the notice of abandonment, on a party to party scale, which costs included the costs of two counsel where applicable. Orders 2 and 3 were largely in favour of the first and second respondents. The applicant was successful on the second notice referred to (order 1).

[4] On 27 September 2013 the attorneys for the first and second respondents addressed a letter to the applicant's attorneys that they would not 'invoke or implement any deferment in terms of the notice of 14 March 2011'. As a result the applicant decided not to proceed with the appeal but to appeal 'only in respect of the order of costs of the court a quo and further seek an order to give effect to the notice of abandonment read with the letter of the respondents' attorneys dated 27 September insofar as the last mentioned relates to the notice published ... on 14 March 2011'.

[5] The applicant submitted in its founding papers that the Government Notice of 14 March 2011 stands because the Government Notice of 31 October 2011, which purported to set it aside, was itself set aside by the order of the court below. Whatever the merits of this contention, the fact remains that the respondents undertook in their letter of 27 September 2013 not to invoke or implement any deferment in terms of the notice of 14 March 2011. The application is therefore entirely academic and will have no practical effect or result (s 21A(1) of the Supreme Court Act 59 of 1959).

[6] Moreover, the application really concerns the order that each party had to pay its own costs. Victor J motivated her judgment on costs fully. She considered that although the first notice had been revoked the applicant persisted in seeking its setting aside. In addition, she criticised the applicant for not pleading with sufficient detail facts relating to its standing. Had it been done, the first respondent would not have had to go the extent that was done to

address this issue. The applicant caused unnecessary costs to be incurred. Another feature that motivated her costs order was the fact that some 800 pages containing information relevant to the case were placed before her without the parties indicating what was relevant and what had to be read. The first respondent, while engaged in bona fide negotiations, published the second notice and thereby caused the negotiations to break down. She concluded that both parties have succeeded and failed on the various issues, and made the order that each pay its own costs. Plainly she exercised her discretion and there are no grounds for us to interfere. The fact that some of the orders have been abandoned does not affect this conclusion.

[7] In the result the appeal is dismissed with costs from after the service of the notice of abandonment.

F R MALAN JUDGE
OF APPEAL

W D Spies

FOR APPELLANT

Hurter Spies Inc, Pretoria
Rossouws Attorneys, Bloemfontein

FOR FIRST AND SECOND RESPONDENTS:

S M Dawood
State Attorney, Pretoria
State Attorney, Bloemfontein