

Reportable:	YES / NO
Circulate to Judges:	YES / NO
Circulate to Regional Magistrates:	YES / NO
Circulate to Magistrates:	YES / NO



**IN THE HIGH COURT OF SOUTH AFRICA
(NORTHERN CAPE DIVISION, KIMBERLEY)**

CASE NUMBER: 1179/2018 & 731/2018

DATE HEARD: 12 February 2021

DATE DELIVERED: 9 February 2024

In the matter between:

**CHIEF EXECUTIVE OFFICER, NORTHERN
CAPE LIQUOR BOARD** Applicant

And

JOSEPH REED Respondent

In re:

JOSEPH REED Applicant

And

**CHIEF EXECUTIVE OFFICER, NORTHERN
CAPE LIQUOR BOARD** Respondent

JUDGMENT

Eillert AJ

[1] Almost 21 years ago, on 30 May 2003, an order was made by Tlaletsi AJ, as he then was, under case number 26/03, that the decision by the Northern Cape Liquor Board to refuse Mr Joseph Reed's application for a

special liquor licence in respect of premises situated in Kimberley, be rescinded, and that the application for the special liquor licence be referred back to the Northern Cape Liquor Board for it to be considered afresh.

- [2] Despite the passing of considerable time, the dust has not yet settled on the litigation between the parties. This judgment concerns two subsequent cases launched by Mr Reed. For ease of reference, I will refer to the parties as they are cited in the main applications, i.e. to Mr Reed as the Applicant and to the Northern Cape Liquor Board as the Respondent.
- [3] In case number 731/2018, the Applicant sought an order compelling the Respondent to provide him with documents and records that would relate to the reconsideration of the application for the special liquor licence by the Respondent. In case number 1179/2018, the Applicant sought an order declaring the Respondent and/or its board members and officials to be in contempt of the order issued by Tlaletsi AJ, as he then was, on 30 May 2003, failing which the Respondent and/or its board members and officials be committed to such term of direct imprisonment as the court would deem appropriate in the circumstances.
- [4] The Respondent delivered notices in terms of Uniform Rule 47 under both aforementioned case numbers. In terms thereof, the Applicant was requested to furnish security in the amount of R300 000.00 in each matter, on the basis that, according to the Respondent, the proceedings instituted by the Applicant are vexatious and an abuse of process. The Applicant did not comply with the Respondent's notices, as a result whereof the Respondent launched an application under both case numbers for the proceedings to be stayed, pending payment by the Applicant of security for the Respondent's costs. It is this application that I am called upon to adjudicate. I will from here on out refer to this application as the stay application.
- [5] On 17 November 2020, prior to the setdown of the stay application, the Applicant delivered notices of withdrawal of the proceedings under both case numbers 731/2018 and 1179/2018. The Office of the State Attorney,

acting for the Respondent, was duly served with the notices of withdrawal of the proceedings. The Respondent nonetheless proceeded with the delivery of a notice of setdown of the stay application, which was signed by the attorney acting for the Respondent on 6 November 2020, provided to the Sheriff of the Court on 9 December 2020, and served upon the Applicant on 14 December 2020. The notice of setdown does not bear a court stamp to indicate on what date the notice of setdown was filed at the Registrar's office.

- [6] At the hearing of the stay application the Applicant, acting in person, whilst expressing a desire for the litigation between the parties to proceed to a hearing, persisted with the withdrawal of the proceedings under both case numbers against the Respondent.
- [7] The effect of the Applicant's withdrawal of the proceedings under both case numbers 731/2018 and 1179/2018 is determinative of the outcome of this judgment.
- [8] Uniform Rule 41(1) provides as follows:

"Rule 41(1)-

- (a) 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; and the taxing master shall tax such costs on the request of the other party.*
- (b) A consent to pay costs referred to in paragraph (a) shall have the effect of an order of court for such costs.*
- (c) If no such consent to pay costs is embodied in the notice of withdrawal, the other party may apply to court on notice for an order for costs."*

[9] In **De Lange v Provincial Commissioner of Correctional Services, Eastern Cape** 2002 (3) SA 683 (SECLD) Leach J (as he then was) defined the term “proceedings” employed in Uniform Rule 41, to mean the following:

“It certainly seems to me to be clear that the ‘proceedings’ referred to in Rule 41(1)(a) are those envisaged by the Rules in which there is a lis between the parties, one of whom seeks redress or the enforcement of rights against the other.”

[10] Rule 41(1) does not create an exception or special dispensation for interlocutory proceedings conducted by parties during main proceedings.

[11] It has further been held that a person who has instituted proceedings is entitled to withdraw such proceedings without the other party’s concurrence and without the leave of the court at any time before the matter is set down.¹

[12] The proceedings under both case numbers 731/2018 and 1179/2018 have previously been set down for hearing. At a stage they had both been postponed for hearing on the opposed roll but was postponed without a return date thereafter on at least two occasions. At the time of the hearing of the stay application, the main proceedings under either case number had not been set down for adjudication again. Because this is so, and based on the principles I have set out above, the Applicant was entitled to withdraw the proceedings against the Respondent in accordance with Rule 41(1) on 17 November 2020.

[13] The only real objection that was raised on behalf of the Respondent against the withdrawal of proceedings by the Applicant was that the Respondent was not convinced that the withdrawal was genuine. Given that the Applicant did deliver written notices to the Respondent wherein he stated that he is withdrawing the proceedings, and that the notices of withdrawal comply with Uniform Rule 41(1)(a), it is difficult to comprehend on what basis the withdrawal could not be considered as genuine. The

¹ Franco Vignazia Enterprises (Pty) Ltd v Berry 1983 (2) SA 290 (C)

Applicant was entitled to withdraw the proceedings, he did so in accordance with Uniform Rule 41(1)(a), and effect must therefore be given thereto.

[14] In the further result, the Respondent was not entitled to proceed with the enrolment of the stay application on or after 14 December 2020, as the main proceedings under case numbers 731/2018 and 1179/2018 had already validly been withdrawn on 17 November 2020. Except for the limited purposes of the cost provisions contained in Uniform Rules 41(1)(b) and (c), a *lis* no longer existed between the parties. In my view the appropriate order to make at this stage would be to strike the stay application from the roll.

[15] Regarding costs, I am of the view that neither party should be awarded costs in this instance. Upon receipt of the notices of withdrawal of the proceedings, the Respondent should have appreciated that it could not prosecute the stay application any further. The Applicant, save for filing a notice of opposition, did not oppose the stay application, and is also not entitled to costs. The Respondent is not left without a remedy. The Applicant did not embody a consent to pay costs in his notice of withdrawal of the proceedings, and the Respondent may therefore still apply to court in terms of Uniform Rule 41(1)(c) for an order for costs if it is so inclined. Furthermore, nothing prevents the Respondent, should it still choose to do so, to launch new proceedings against the Applicant for appropriate relief on the basis contended for, that the Applicant should be found to be a vexatious litigant.

[16] In the result I make the following order:

1. The Respondent's application for a stay of proceedings under case numbers 731/2018 and 1179/2018 is struck from the roll;
 2. No cost order is made.
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A EILLERT

ACTING JUDGE

For APPLICANTS :

MR RABIE

KIMBERLEY

For RESPONDENT :

ADV MOTLOUNG

KIMBERLEY