THE ELECTORAL COURT OF SOUTH AFRICA

BLOEMFONTEIN

CASE NO: 0034/24EC

In the matter between:

UMKHONTO WESIZWE POLITICAL PARTY	Applicant
and	
ELECTORAL COMMISSION OF SOUTH AFRICA	First Respondent
CHIEF ELECTORAL OFFICER	Second Respondent
PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA	Third Respondent
SPEAKER OF THE NATIONAL ASSEMBLY	Fourth Respondent
POLITICAL PARTIES WITH DESIGNATED REPRESENTATIVES IN THE NATIONAL ASSEMBLY	Fifth to 21st Respondents
POLITICAL PARTIES WITHOUT DESIGNATED REPRESENTATIVES IN THE NATIONAL ASSEMBLY	22nd to Further Respondents

Neutral citation: *Umkhonto Wesizwe Political Party v The Electoral Commission of South Africa and Others* (0034/24EC) [2024] ZAEC 26 (25 October 2024).

Coram: Zondi DP, Adams and Steyn AJJ, Professor Ntlama-Makhanya, and Phooko (Additional Members).

Heard: Decided in chambers on the papers.

Delivered: This judgment was handed down electronically by circulation to the parties' legal representatives via e-mail, publication on the Supreme Court of Appeal website and released to SAFLII. The date and time for hand-down are deemed to be delivered on 25 October 2024 at 11h00.

Summary: Uniform Rule 41 – Withdrawal after set-down – Judicial discretion in awarding punitive costs – Exceptional circumstances justifying punitive costs order – Costs awarded on attorney-client scale against withdrawing party.

ORDER

The following order shall issue:

1. The applicant is granted leave to withdraw the application.
2. The applicant shall pay the costs of the first and second respondents on the attorney-client scale, including the costs of two counsel.
3. The applicant shall pay the costs of the Democratic Alliance on the party and party scale, including the costs of counsel at scale C.

JUDGMENT

Steyn AJ (Zondi DP, Adams AJ, and Professors Ntlama-Makhanya and Phooko concurring):

Introduction

[1] The applicant, Umkhonto Wesizwe Political Party (MK Party), seeks leave to withdraw its application before this court, in terms of Rule 41(1) of the Uniform Rules of Court. The application in question relates to alleged election irregularities against the first and second respondents, the Electoral Commission of South Africa (Commission) and the Chief Electoral Officer of the Commission (CEO), respectively. The MK Party's initial withdrawal attempt followed the Commission's filing of answering affidavits. Shortly thereafter, and subsequent to the matter being set down for hearing, the MK Party filed a notice of withdrawal,[1] stating: 'Kindly take notice that the Applicant hereby withdraws their application against the Respondents.'

[2] The MK Party's purported withdrawal was not effected with the consent of the other parties. Suffice to say that the attempted withdrawal was procedurally defective and failed to comply with the requirements of Rule 41. Not only was the unilateral withdrawal

[1] This notice is dated 3 July 2024

impermissible, but the MK Party also neglected to tender costs to the other litigants, a necessary element of a proper withdrawal.

[3] This ostensible withdrawal by the MK Party triggered a flurry of correspondence between the parties. The ensuing exchange of letters centred on the issue of costs and the absence of consent from the other parties to the withdrawal. On 15 July 2024, this court set the matter down for hearing. Subsequently, the MK Party's representatives dispatched an email to the registrar, referencing the withdrawal of the application and expressing an expectation that the matter would not proceed on 29 July 2024.

[4] Mr Xulu, in a further communication to this court, contended that:

'It does not prejudice the IEC in any way if the matter is withdrawn as it has. The Commission's insistence that the hearing be proceeded with on 29 July 2024 is simply vindictive and designed to advance political objectives rather (*sic*) in the public interest or the proper administration of justice.

We ask the Court to convey to the parties whether in light of the clear and unequivocal withdrawal of the application by our client, it should not exercise its discretion to simply issue an order that the matter is withdrawn, prior to the notice of set down.'

[5] In response to the MK Party's notice of withdrawal, the registrar of this court, acting on instructions from the Chair of the Electoral Court, issued a directive on 26 July 2024. The directive stipulated that the matter would be removed from the trial roll of 29 July 2024 and would instead be subject to case management. The matter was subsequently assigned to me for judicial case management. A case management meeting was convened on 1 August 2024, during which the parties were afforded an opportunity to resolve their issues and report the outcome of any settlement to this court by no later than 5 August 2024.

[6] On 5 August 2024, the MK Party confirmed that the sixth respondent, the Democratic Alliance (DA), along with other respondents who had elected to abide by the court's decision, had consented to the withdrawal of the matter. This consent was

predicated on the tender of legal costs to the DA, to be paid on a party and party scale, with counsel's costs at scale C. The same tender was made to the first and second respondents. They, however, remained opposed to the withdrawal of the application absent an undertaking from the MK Party that it would not re-institute a similar application on the same issues without leave being granted by this court. It was submitted that should this court grant such withdrawal, it should be conditional and accompanied by punitive costs.

The issue(s)

[7] The crux of the dispute before this court lies in determining whether the MK Party should be granted leave to withdraw its application, and if so, on what terms. Central to this determination is whether this court should exercise its discretion to grant such leave, considering the stage at which the application has reached and any potential prejudice to the respondents. Furthermore, the question of costs is paramount, particularly whether the general rule of awarding costs against the withdrawing party should be applied in this instance.

Applicable legal prescripts

[8] The regulatory framework for orderly settlement, discontinuance, postponement, and abandonment of proceedings is to be found in Uniform Rule 41(1). This rule empowers parties with the option to discontinue their actions while safeguarding the interests of opposing parties. The essential features of the framework are as follows:

'(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] Put differently, Rule 41(1) ensures that parties have the option to discontinue their actions, while also safeguarding the interests of opposing parties who may have incurred expenses in responding to the initial claim. The rule strikes a balance between a party's right to withdraw and the potential prejudice to other parties involved.

[10] As already mentioned above, the Commission opposes the MK Party's proposed terms of withdrawal, contending that the MK Party's conduct necessitates an order for costs in its favour. The Commission submits that the MK Party's decision to withdraw its application after the Commission had incurred significant costs in defending the application, is indicative of an abusive and dilatory litigation strategy. The Commission further submits that the MK Party's conduct mirrors similar patterns observed in previous litigation between the parties. In the Constitutional Court, the MK Party's interim Secretary General, Mr Ngubane, repeatedly stated under oath that the applicant had evidence to support its claims of material irregularities in the 2024 National and Provincial elections. No evidence was produced in support of these claims. The Constitutional Court recognised this in dismissing the application, stating that '[i]n addition, the applicant has not adduced facts to establish a prima facie case in respect of the relief it will seek in the main application, . . .''[2]

[11] The respondents point out that this is not the first time the MK Party has instituted legal proceedings against the Commission in relation to the same alleged irregularities, with the previous two attempts having been dismissed by the Constitutional Court. The Commission contends that this repeated litigation, coupled with the MK Party's late withdrawal in the present case, points to a deliberate attempt to harass the Commission in particular and subject it to unnecessary legal expenses.

[12] Tangentially, the Commission raises concerns regarding the MK Party's lack of concrete evidence to support its alleged irregularities. It further contends that despite making claims in this application regarding 'confirmatory affidavits' and 'technical reports',

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[2] *Umkhonto Wesizwe Party v The Chief Justice of The Republic of South Africa and Others* CCT 178/24.

the MK Party has failed to produce such documents, which, so it is contended, raises suspicions about the *bona fides* of its claims.

[13] In my view, it is important to consider that the MK Party's application to withdraw does not constitute an admission or an acceptance of the veracity of the allegations made against it. The Commission bears the onus of proving the alleged abuse of process by the MK party. This court must carefully assess the evidence presented to determine whether it should exercise its discretion in favour of the withdrawal and whether the conduct of the MK Party is such as to warrant a conditional withdrawal. The proposals regarding the conditional withdrawal are based on the Commission's claims that the application is an abuse of process.

[14] In light of the arguments presented, this court must determine whether the MK Party's conduct in this case constitutes 'exceptional circumstances' sufficient to deviate from the general rule of awarding costs against the withdrawing party, as elucidated in a number of cases.[3] This court's decision will require a careful balancing of the MK Party's right to withdraw its application against the potential prejudice to the respondents and the need to discourage frivolous and abusive litigation practices. As I see it, it is not the duty of the court to force a litigant to proceed with an application and to investigate the reasons for abandoning its claim. An exception would be where an application constitutes an abuse of the court process.[4]

[15] During the negotiations between the parties, the Commission proposed the following draft order:

'1. The applicant is granted leave to withdraw the application.

2. The applicant may not reinstitute an application in this Court on the same or substantially similar issues and relief without the leave of the Court on good cause shown.

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[3] See *Martin NO v Road Accident Fund* 2000(2) SA 1023 (WLD) at 1026H-1027A; *Wildlife and Environment Society of South Africa v MEC for Economic Affairs, Environment and Tourism, Eastern Cape Provincial Government and Others* [2005] ZAECHC 14; *Hammond and Hammond Transactional Law Clinic v Bitou Municipality and Others* [2021] ZAWCHC 150 at para 16; and *Twala v ABSA Bank Limited* [2022] ZAGPJHC 185 at para 14 (*Twala*).

[4] See *Levy v Levy* 1991 (3) SA 614 (A) at 620.

3. Should the applicant seek leave as contemplated in paragraph 2, it must do so on affidavit explaining the circumstances of the withdrawal.
4. The applicant shall pay the costs of the First and Second Respondents on the attorney-client scale, including the costs of two counsel.
5. The applicant shall pay the costs of the Democratic Alliance on the party and party scale, including the costs of counsel at scale C'.

MK Party's right to have access to justice

[16] It is necessary, in light of the proposed order, to consider some of the conditions proposed. The Commission, in its proposed draft order, effectively seeks to limit the MK Party's ability to reinstitute similar applications without leave of this court. This, in my view, raises concern about potentially limiting the MK Party's right to access to justice. It is well-established that an important purpose of s 34[5] of the Constitution is to guarantee the protection of the judicial process to persons who have disputes that can be resolved by application of the law.[6] Mokgoro J, in *Chief Lesapo v North West Agricultural Bank and another*,[7] encapsulated the principle as follows:

'. . .The right of access to courts is important in the adjudication of justiciable disputes. In *Concorde Plastics (Pty) Ltd v NUMSA and Others*, Marcus AJ expressed the importance of the right as follows:

"In my view, access to the courts of law is foundational to the stability of society. It ensures that parties to a dispute have an institutionalised mechanism to resolve their differences without recourse to self-help. The nature of civil proceedings has been eloquently described by Eduardo Couture *The Nature of Judicial Process* (1950) 25 *Tulane Law* Review 1 at 7 in the following way. 'The facts tells [*sic*] us that when a plaintiff wants to instigate a suit, he can do so although the defendant does not want him to do so, nor even the judge. This is a fact derived from legal experience, from the life of law.

Those who have been able to see this fact in historical perspective and have noted its slow but steady growth, have realised that the law has proceeded in this direction from necessity, not from

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[5] Section 34 of the Constitution reads as follows:
'Access to courts – everyone has the right to have any dispute that can be resolved by the application of law decided in a fair public hearing before a court or, where appropriate, another independent and impartial tribunal or forum.'

[6] *Chief Lesapo v North West Agricultural Bank and another* [1999] ZACC 16; 2000 (1) SA 409 (CC) at para 13 (*Chief*).

[7] Ibid at paras 13 – 22.

expediency. Primitive man's reaction to injustice appears in the form of vengeance, and by "primitive" I mean not only primitive in a historical sense, but also primitive in the formation of moral sentiments and impulses. The first impulse of a rudimentary soul is to do justice by his own hand. Only at the cost of mightly [*sic*] historical efforts has it been possible to supplant in the human soul the idea of self-obtained justice by the idea of justice entrusted to authorities.
A civil action, in final analysis, then, is civilisation's substitute for vengeance. In its present form, this civilised substitute for vengeance consists in a legal power to resort to the court praying for something against a defendant. Whether the claim is well-founded or not, is a totally different and indifferent, fact.'"

The right of access to court is indeed foundational to the stability of an orderly society. It ensures the peaceful, regulated and institutionalised mechanisms to resolve disputes, without resorting to self-help. The right of access to court is a bulwark against vigilantism, and the chaos and anarchy which it causes. Construed in this context of the rule of law and the principle against self-help in particular, access to court is indeed of cardinal importance. As a result, very powerful considerations would be required for its limitation to be reasonable and justifiable.' (Original footnotes omitted, my emphasis.)

[17] At the heart of the Commission's proposed order lies a potential constraint on the MK Party's right to judicial recourse. The Commission seeks to curtail the MK Party's ability to reinstitute these proceedings, a proposition not without factual underpinning. Central to this stance is the MK Party's litigious history *vis-à-vis* the Commission. What the Commission puts forth is that this application marks another attempt at litigation concerning similar allegations, notwithstanding prior judicial dismissals. The Commission's case is that this pattern of repeated filings, despite earlier rejections, necessitates a safeguard against future actions of a similar nature. In advancing this position, the Commission points to the substantial costs incurred in defending against these recurrent applications. This financial burden, it was submitted, lends credence to the Commission's appeal for an order that would preclude further litigation on these grounds. The Commission thus comes before this court seeking a remedy that, while potentially limiting the MK Party's rights, is rooted in a documented history of repetitive legal actions.

[18] Several cases of our judicial precedent on this matter illuminate the courts' approach to comparable scenarios. For example, what emerges from *Bondev Midrand (Pty) Ltd v Puling Bondev Midrand (Pty) Ltd v Ramokgopa*,[8] is a reaffirmation of the principle that litigants should not be compelled to pursue actions against their volition. However, *Bondev* also underscores the court's obligation to safeguard against the abuse of its processes. The case of *Twala*[9] further elucidates the court's discretionary power in cost allocation when a party withdraws its action. Central to *Twala's* reasoning is the necessity to evaluate whether the withdrawing party's conduct constitutes 'exceptional circumstances', warranting a departure from the general rule of costs following the event. This jurisprudence, delineates the delicate balance courts must strike between deterring abusive litigation tactics and preserving access to justice for meritorious claims. Thus, this court must evaluate whether these costs were indeed substantial and whether costs were unnecessarily incurred due to the MK Party's conduct, that is, the intended withdrawal after the matter was set down.

Discussion

[19] The relief sought by the respondents is self-evidently drastic. They want this court to prevent the MK Party from launching any other proceedings of a similar nature unless they first seek leave from this court to launch such proceedings. Our courts have inherent powers to prevent abuse of their processes. In *Lawyers for Human Rights v Minister in the Presidency and Others*,[10] the Constitutional Court endorsed the approach taken by the Supreme Court of Appeal in that 'there can be no doubt that every court is entitled to protect itself and others against an abuse of its processes', and further:

'What does constitute an abuse of the process of the Court is a matter which needs to be determined by the circumstances of each case. There can be no all-encompassing definition of the concept of 'abuse of process'. It can be said in general terms, however, that an abuse of process takes place where the procedures permitted by the Rules of the Court to facilitate the pursuit of the truth are used for a purpose extraneous to that objective.' (My emphasis)

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[8] *Bondev Midrand (Pty) Limited v Puling and Another, Bondev Midrand (Pty) Limited v Ramokgopa* [2017] ZASCA 141; 2017 (6) SA 373 (SCA) (*Bondev*).
[9] See *Twala* above fn4.
[10] *Lawyers for Human Rights v Minister in the Presidency and Others* [2016] ZACC 45; 2017 (1) SA 645 (CC); 2017 (4) BCLR 445 (CC) at para 20.

[20] The process where a litigant, as in this case, seeks to bar another litigant from instituting proceedings against them without first seeking leave of the court, is regulated by the Vexatious Proceedings Act (the Act).[11] Section 2(1)(b) of the Act provides that:

'If, on an application made by any person against whom legal proceedings have been instituted by any other person or who has reason to believe that the institution of legal proceedings against him is contemplated by any other person, the court is satisfied that the said person has persistently and without any reasonable ground instituted legal proceedings in any court or in any inferior court, whether against the same person or against different persons, the court may, after hearing that other person or giving him an opportunity of being heard, order that no legal proceedings shall be instituted by him against any person in any court or any inferior court without the leave of that court, or any judge thereof, or that inferior court, as the case may be, and such leave shall not be granted unless the court or judge or the inferior court, as the case may be, is satisfied that the proceedings are not an abuse of the process of the court and that there is prima facie ground for the proceedings.'

[21] The history behind the passing of the Act has its origins in the decision of In Re Anastassiades.[12] In *Beinash and Another v Ernst & Young and Others*,[13] the Constitutional Court explained this history as follows:

'[T]he Act was passed in 1956 largely in response to the perceived shortcomings of the common law position that had obtained until then. The position is aptly illustrated in *In Re Anastassiades* decided the previous year. In that case, so the judgment tells us, Mr Anastassiades, an unrehabilitated insolvent, sought to improve his economic position by an ingenious strategy. He routinely sued numerous companies which he alleged were involved in a "conspiracy of association" for substantial damages. Sufficiently impecunious as to make a costs award against him no more than an empty claim, Mr Anastassiades drew his own pleadings and argued his own cases with the hope that one of the defendants cited in his numerous summonses would seek a settlement of the claim. One substantial settlement would make all the effort, and by his own admission, the "harassment", worthwhile.

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[11] Vexatious Proceedings Act 3 of 1956.
[12] *In Re Anastassiades* 1955 (2) SA 220 (W) 225 to 226.
[13] *Beinash and Another v Ernst & Young and Others* [1998] ZACC 19; 1999 (2) SA 116 (CC); 1999 (2) BCLR 125 (CC) at paras 10-11.

After examining the relevant authorities, Ramsbottom J held that, absent a statutory power, he had no jurisdiction under the common law to make an order that would curtail Mr Anastassiades' power to litigate more than that which would be required by the circumstances and between the parties of the particular case. In direct response to this, the Act was passed the following year. However, this Act did not purport to repeal the common law. It is unnecessary in light of the facts of this case to consider further the effect, if any, the enactment of the statute had on the common law remedy.'

[22] In *Member of the Executive Council for the Department of Co-operative Governance and Traditional Affairs v Maphanga*,[14] the Supreme Court Appeal explained that this Act has not changed the common law position, which was as follows:

'It was firmly established in the South African common law, long before the advent of the Constitution, that the Supreme Court had the inherent power to regulate its own process and stop frivolous and vexatious proceedings before it. This power related solely to proceedings in the Supreme Court and not to proceedings in the inferior courts or other courts or tribunals. The following principles crystallised over the ages. It had to be shown that the respondent had 'habitually and persistently instituted vexatious legal proceedings without reasonable grounds. Legal proceedings were vexatious and an abuse of the process of court if they were obviously unsustainable as a certainty and not merely on a preponderance of probability. I must point out at this juncture that this definition applied to all litigation that amounted to an abuse of court process.' (Footnotes omitted.)

[23] The respondents have not instituted proceedings in terms of the Act to bar the applicants from pursuing the application they seek to withdraw. Moreover, as is the case when an application is launched in terms of those proceedings, barring them in these proceedings would be a limitation of the applicants right of access to justice which is guaranteed in s 34 of the Constitution. In *President of the Republic of South Africa and Another v Modderklip Boerdery (Pty) Ltd*,[15] the Constitutional Court explained that:

'Section 1(c) of the Constitution refers to the "[s]upremacy of the constitution and the rule of law" as some of the values that are foundational to our constitutional order. The first aspect that flows

[14] *Member of the Executive Council for the Department of Co-operative Governance and Traditional Affairs v Maphanga* [2019] ZASCA 147; [2020] 1 All SA 52 (SCA); 2021 (4) SA 131 (SCA) at para 25.
[15] *President of the Republic of South Africa and Another v Modderklip Boerdery (Pty) Ltd* [2005] ZACC 5; 2005 (5) SA 3 (CC); 2005 (8) BCLR 786 (CC) at para 38.

from the rule of law is the obligation of the state to provide the necessary mechanisms for citizens to resolve disputes that arise between them. This obligation has its corollary in the right or entitlement of every person to have access to courts or other independent forums 'provided by the state for the settlement of such disputes.' (Footnote omitted.)

[24] For a right to be limited, it must comply with s 36 of the Constitution. However, I do not deem it necessary to consider this aspect because, as stated above, the respondents have an adequate remedy in the Act against any similar applications in future. They have not instituted such proceedings, nor have they made out a case as to why s 36 of the Constitution and not the Act should apply.

Conclusion and costs

[25] As to costs, the Commission, in its proposed draft order, seeks an order of costs against the MK Party on an attorney-client scale. The imposition of attorney and client costs, as affirmed in *Public Protector v South African Reserve Bank*,[16] constitutes an exceptional measure. It is invoked solely in situations where a party's conduct during litigation demonstrably surpasses the bounds of what is considered acceptable. Such an award signifies extreme disapproval of a litigant's actions and serves as a severe penalty. The guiding punitive costs principle made clear in *Plastic Converters Association of SA on behalf of Members v National Union of Metalworkers of SA*,[17] and reaffirmed more recently in the Constitutional Court's decision in *Mkhatshwa and Others v Mkhatshwa and Others*[18]is that:

'The scale of attorney and client is an extraordinary one which should be reserved for cases where it can be found that a litigant conducted itself in a clear and indubitably vexatious and reprehensible manner. Such an award is exceptional and is intended to be very punitive and indicative of extreme opprobrium.'[19]

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[16] *Public Protector v South African Reserve Bank* [2019] ZACC 29; 2019 (6) SA 253 (CC); 2019 (9) BCLR 1113.
[17] *Plastic Converters Association of SA on behalf of Members v National Union of Metalworkers of SA* [2016] ZALAC 39; (2016) 37 ILJ 2815 (LAC).
[18] *Mkhatshwa and Others v Mkhatshwa and Others* [2021] ZACC 15; 2021 (5) SA 447 (CC); 2021 (10) BCLR 1182 (CC) (*Mkhatshwa*).
[19] *Public Protector V South African Reserve Bank* above at fn 17 para 225, citing, with approval, *Plastic Converters Association of SA on behalf of Members v National Union of Metalworkers of SA* [2016] ZALAC 39; (2016) 37 ILJ 2815 (LAC) at para 46.

[26] To apply this punitive measure, the withdrawing party's actions must rise to the level of egregiousness that would justify such a sanction. In general, this court does not order unsuccessful parties to pay costs, but this rule is not inflexible and is applied to the facts of each matter. As stated earlier in this judgment, the MK Party approached this court after an earlier dismissal of its claims in the Constitutional Court. It is common cause that the first and second respondents filed lengthy answering affidavits to oppose the application and that they incurred costs in doing so. After doing so the MK Party sought a unilateral withdrawal of the application without tendering the respondents' costs. Moreover, the applicant in a correspondence from its attorney intended to supplement its founding affidavit with a supplementary affidavit and after being informed that leave should be applied for, it abandoned the intended course.

[27] It is well-established that the party withdrawing an application is liable for the costs of the proceedings since it is deemed as being an unsuccessful litigant.[20] No exceptional circumstances have been raised by the MK Party that it would be unfair to mulct the unsuccessful party with costs. I cannot find any reason why the first and second respondents should be deprived of the costs that they have incurred. It bears noting that this court, having made the determination to decide this matter on the papers, extended an invitation to the parties to file heads of argument addressing both the withdrawal application and the judicial discretion to be exercised in these circumstances. The MK Party elected not to file any heads. Several unusual circumstances warrant consideration. What emerges from the factual matrix is a pattern of conduct by the MK Party that deviates from standard litigation practice. Central to this assessment is the MK Party's awareness of its prior unsuccessful application before the Constitutional Court. This antecedent should have prompted a more cautious and comprehensive approach in presenting its case to this court.

[20] See also *Germishuys v Douglas Besproeingsraad* 1973(3) SA 299 (NK) at 300 D.

[28] The MK Party's failure to append requisite expert reports or file confirmatory affidavits in support of its averments stands in stark contrast to this expectation. Further compounding the irregularity is the MK Party's attempted unilateral withdrawal of the application, executed without seeking leave from either the respondents or this court, despite the matter being set down for hearing. This procedural misstep was followed by a subsequent withdrawal application, notable for its omission of a costs tender to the respondents. The court's intervention through a judicial case management hearing prompted a partial rectification, which resulted in costs tendered to the sixth respondent, but not costs on the terms of the first and second respondents. The culmination of this sequence of events is marked by the MK Party's decision to forgo the opportunity, extended by this court, to file heads of argument for paper-based adjudication. This constellation of factors constitutes a departure from normative litigation conduct, which must, as I do so find, be taken into consideration in this court's decision on costs allocation.

[29] I have found that the MK Party should be granted leave to withdraw its application. However, this withdrawal should not be conditional as proposed by the first and second respondents. On the papers before me, I am not persuaded that the withdrawal constitutes an abuse of process yet. Indeed, the MK Party's conduct throughout these proceedings has been marked by several irregularities. These factors constitute a significant departure from normative litigation conduct and do warrant consideration of a punitive costs order. I am of the view that a punitive costs order is appropriate to dissuade litigants from instituting proceedings and then abruptly abandoning them when unsubstantiated. Given these circumstances, I find that a costs order on an attorney and client scale is warranted for the first and second respondents, who have been drawn into these proceedings for a second time, and at a great cost. The costs of the sixth respondent, having been tendered on the party and party scale on 5 August 2024 and accepted, require no further consideration.

[30] In the result, the following order shall issue:

1. The applicant is granted leave to withdraw the application.

2. The applicant shall pay the costs of the first and second respondents on the attorney-client scale, including the costs of two counsel.
3. The applicant shall pay the costs of the Democratic Alliance on the party and party scale, including the costs of counsel at scale C.

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EJS STEYN

ACTING JUDGE OF THE ELECTORAL COURT

Appearances:

For the applicant:	
Instructed by :	JG & Xulu Incorporated, Johannesburg
For the first and second respondents:	T Ngcukaitobi SC and J Bleazard
Instructed by:	Moeti Kanyane Incorporated Attorneys, Centurion
For the sixth respondent:	M De Beer
Instructed by:	Minde Shapiro and Smith, Cape Town