

IN THE HIGH COURT OF SOUTH AFRICA
(TRANSVAAL PROVINCIAL DIVISION)

CASE NUMBER: 46363/10

DELETE WHICHEVER IS NOT APPLICABLE

(1) REPORTABLE: YES/NO.

In the matter between: INTEREST TO OTHER JUDGES: YES/NO.

(3) REVISED.

ROY JOHN PAGE-SHIP

And

2011-03-28
DATE

SIGNATURE

28/3/2011
APPLICANT

THE MANOR RIDGE BODY CORPORATE

FIRST RESPONDENT

MADELEINE SPENGLER

SECOND RESPONDENT

CONSTANT JOHANNES LAUBSCHER

FIRST RESPONDENT

AG VOSTER

FOURTH RESPONDENT

N KOTZE

FIFTH RESPONDENT

Reasons for JUDGMENT

MAVUNDLA J,

[1] The parties reached an agreement which was made an order of the Court in terms of which:

1.1 The first respondent is ordered to convene a special general meeting on or before 31 May 2011 to decide, the following issues:

1.1.1 Whether the first respondent must collect the sum of R9, 864.00 from the eight applicants in the arbitration proceedings;

1.1.2 Whether the trustees should enrol the urgent application in terms of Rule 41(10© for an order directing the previous trustees to pay the costs thereof *de bonis propriis*.

1.1.3 Whether the First respondent will pay, legal fees payable to Weavind & Weavind and Adv Booysen for legal services rendered to the current trustees in the urgent application. It is alleged that, Weavind & Weavind were only mandated after 15 July 2008.

[2] The parties were not agreed as to who should pay the costs. I however made an order "2. That the applicant pays the costs of this application." I stated that I will give reasons in respect of the costs order I gave. These are the reasons for this order.

[3] It is trite that the successful party is generally awarded costs. Equally so, it is trite that costs awards are a matter of the

discretion of the court. However in the matter of Unimark Distributors (Pty) Ltd v ERF 94 Silvertondale (PTY) Ltd¹ the successful party was ordered to pay part of the opponent's costs because he was partially successful and partially unsuccessful.

- [4] In the matter of Michael and Another v Linksfield Park Clinic (Pty) Ltd² it was said:

"[5] It is beyond question that the circumstances of a case may warrant an order, in the exercise of the Court's discretion, depriving a successful party of costs partially or entirely, and even warrant an order requiring the successful party to pay the unsuccessful party's costs--- again partially."

- [5] The applicant is a member of the first respondent, its past trustee until 15 July 2008 when he in an Annual General Meeting. The applicant's chagrin was his dissatisfaction about certain amount of R49 988, 00 that was paid by the respondent to certain attorneys in respect of legal fees that were reflected in the financial statement for the year end of February 2009. He was also not with the explanation proffered to him by the

¹ 2003 (1) SA 204 (T).

² 2001 (3) SA 1188 (SCA) at 1203.

remaining trustees of the first respondent. The applicant was further disenchanted with the fact that the trustees of the first respondent decided to utilise funds belonging to the first respondent to make payment of legal fees for which three of the four trustees (being the second respondent, the third and fourth respondents in the present application were personally liable. He further took the view that the trustees of the first respondent were not acting honestly and in good faith in relation to the body corporate and acted in breach of their fiduciary duties towards the first respondent. He then decided to launch this application seeking an appointment of an Administrator of the Body Corporate of Manor Ridge in terms of Section 46 of the Sectional Titles Act, 1986 for a period of 3 months.

- [6] The applicant was afforded an opportunity to inspect the records of the first respondent concerning his reservations about the amounts that formed the legal fees. Rule 56(a) of the Management of Rules of the first respondent makes provision of the consideration of financial statements and report referred to in rule 37 and 38. In my view, there is nothing that precluded

the applicant in calling for the tabling of his misgivings for discussion in a general meeting. Besides, according to the respondent a proper explanation was given as to how the legal fees that raised the ire of the applicant were discussed and explained³. In motion proceedings, where there is a dispute of fact, the court must decide the issues on the version of the respondent, together with the admitted fact of the applicant. I would then have had to accept that an explanation was furnished to the applicant, although he was not satisfied therewith. Surely the reservations of the applicant could have been addressed by the entire membership of the Body Corporate, just as much as the applicant has eventually agreed to have the Body Corporate deal with these issues. The first respondent consists of its members. Whatever amounts it disburse, in the final analysis it is the membership that carries these costs. Where a member drags the membership to court

³ Paginate page 79 para 11 of the respondent's answering affidavit.

on an issue that could have been resolved by the membership in a meeting, any member who drags the entire membership to court on issues that could have been resolved domestically, should bear the costs pertaining to such action, as *in casu*. It is for the above reasons that I decided that the applicant should bear the costs, rather than these be borne by the general membership.


N.M. MAVUNDLA

JUDGE OF THE HIGH COURT

HEARD ON THE : 04 / MARCH / 2011

DATE OF JUDGMENT: 28/ MARCH / 2011

APPLICANTS' ATT : KLAGSBRUN DE VRIES & VAN
DEVENTER

APPLICANT'S ADV : C. HARMS

RESPONDENT'S ATT : WEAVIND & WEAVIND

RESPONDENT'S ADV : A. SOUTH