



**IN THE HIGH COURT OF SOUTH AFRICA  
(GAUTENG DIVISION, PRETORIA)**

**Case number: 51888/2021**

|                    |                                                                                    |
|--------------------|------------------------------------------------------------------------------------|
| (1)                | REPORTABLE: <b>NO/YES</b>                                                          |
| (2)                | OF INTEREST TO OTHER JUDGES:<br><b>NO/YES</b>                                      |
| (3)                | REVISED. <b>NO/YES</b>                                                             |
| <u>30</u> MAY 2022 |  |
| DATE               | SIGNATURE                                                                          |

**In the matter between:**

**Uniqon Developers (Pty) Ltd**

**Applicant**

**And**

**The City of Tshwane**

**First Respondent**

**The Municipal Planning Tribunal**

**Second Respondent**

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**JUDGMENT**

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## **MAKHOB A J**

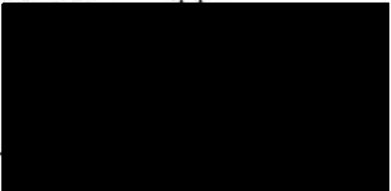
1. The applicant is Uniqon Developers (Pty) Ltd, a legal entity separate and distinct from its members and directors. It is registered as a private company in terms of the Companies Act, 61 of 1973.
2. The first respondent is the City of Tshwane Metropolitan. The second respondent is the Municipal Planning Tribunal.
3. The second respondent is the Municipal Planning approval authority responsible for considering and deciding on matters and applications lawfully referred to or submitted to it in terms of any relevant planning legislation as may be determined by the Municipal Council of the first respondent, as provided for in sections 37 (4), read with sections 40(1) & (4) of the Spatial Planning and Land Use Management Act 16 of 2013 (SPLUMA).
4. The applicant brought an urgent application that was set down for hearing on 26 October 2021. In the application, the applicant sought an order to declare that the first respondent's failure/neglect/refusal to refer the applicant's development application to the second respondent unlawful. Furthermore, the applicant asked the court to order the department responsible for development planning to prepare a report on the applicant's development application for submission to the second respondent.
5. On the 26<sup>th</sup> October 2021 the matter was settled. The issue of costs was reserved for later determination. The issue before this court is to determine who is liable for the costs occasioned at the urgent court.

6. Counsel for the applicant raised a point *in limine* in respect of the document (a directive) issued by the respondent in terms of section 40 (7) (C) of SPLUMA. The applicant objected to the handing in of this document.
7. On behalf of the respondent counsel submitted that the document is relevant and admissible. The court ruled document was inadmissible and reasons were reserved.
8. I did not admit the document because the applicant objected to its admissibility and therefore it was the duty of counsel for the respondent to prove before this court that the document met the requirements of admissibility.<sup>1</sup> Counsel failed to prove that the requirements were met. Hence the document was ruled inadmissible.
9. I will not delve too much in the issues raised by the parties in the urgent court but will confine myself to the issues about who should be awarded costs as expressed in *Minister of Justice and Others V Estate Stransham-Ford* [2016] 197; 2017 (3) SA 152 (SCA) para 22.
10. The respondent submitted that in the papers before the urgent court the applicant did not state in its papers that it had not complied with a directive issued by the second respondent in terms of section 40(7) (C) of SPLUMA on the 17<sup>th</sup> March 2021.
11. Furthermore, it is submitted by the respondent that there were a number of objections to the applicant's application. The applicant was accordingly requested via email to liase with the objectors as per the directive in the circular.

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<sup>1</sup> Welz v Hall 1996 (4) SA 1073 C at 1079 C-E

12. The applicant complied with the directive on the day of hearing which is the 26<sup>th</sup> October 2021. This was the reason the parties were able to reach a settlement. Instead of the applicant complying with the directive the applicant rushed to court prematurely. For these reasons the respondents argued that it will not be fair to award costs in favour of the applicant.
13. Counsel for the applicant submitted that when the urgent application was brought, the applicant's development application was not before the second respondent. The purpose of the application was to compel the first respondent to refer the application to the second respondent.
14. In my view since the directive which the respondent sought to hand in was ruled inadmissible by this court. There is therefore no merit in the respondent's submissions why the respondent should not pay the costs of the urgent application.
15. Even if the directive was admitted by this court, still the first respondent was duty bound to refer the application to the second respondent.
16. I make the following order:
- 16.1 Respondents must pay the cost of the urgent application which costs to include the costs of the respondent's opposition to the applicant's claim for costs.



**D MAKHOB**

**JUDGE OF THE HIGH COURT,  
GAUTENG DIVISION, PRETORIA**



**APPEARANCES:**

**For the applicant: Advocate A Vorster**

**Instructed by: Van Der Merwe & Associates**

**For the first & Advocate V Mabuza  
second respondents:**

**Instructed by: Diale Mogashoa Attorneys**

**Date heard: 19 April 2022**

**Date of Judgment: 30 May 2022**