

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
(FREE STATE DIVISION, BLOEMFONTEIN)

CASE NO: 2525/2018

In the matter between

THE BODY CORPORTATE LIBRAY MANSIONS

APPLICANT

And

MANGAUNG METROPOLITAN MUNICIPALITY

RESPONDENT

HEARD ON: **13 SEPTEMBER 2018**

JUDGMENT BY: **CHESIWE , J**

DELIVERED ON: **29 NOVEMEBER 2018**

- [1] This matter came as an urgent application for an interim order requiring the Respondent to re-connect the water supply to the flats owned by the Applicant. The Respondent opposed the application.

Background

- [2] The Applicant is the body corporate of Sectional Title Scheme known as Library Mansions. The units were transferred to the new owner in 2007. The municipality issued clearance certificates which confirmed that there were no outstanding rates and taxes to be paid. Further transfers of units was done in April 2017 and shortly thereafter the Respondent sent out accounts which showed that the Applicant owed rates and taxes in an amount of R791 604.87. The Applicant disputed the amount based on the fact that clearance certificate were issued to the new owners prior to the sale of property. The parties had various meetings and consultations to resolve the dispute. In 2013 the Applicant received a letter of demand from the Respondent claiming an amount of R1 086 303.61. The Applicant lodged a dispute in this regard. Since the dispute was lodged the Respondent did not inform the Applicant of the outcome of the dispute.
- [3] The Applicant in the meantime made payments to the Respondent, in spite of the payments the Respondent proceeded to disconnect the water supply without any notice to the Applicant.

[4] The Applicant in the urgent application prayed for the following order:

- “1. That the matter be heard on an urgent basis and that condonation be granted in respect of the non-compliance of the usual forms, time and manner of service as prescribed by the Uniform Rules of Court;
2. That a Rule Nisi be issued calling upon the Respondent to show cause (if any) on Thursday 28 June 2018 at 09:30, why a final order in the following terms should not be granted.

2.1 That the Respondent be directed to re-connect the water supply to the Library Mansions situated at 55 Charles Street, Bloemfontein, as soon as practically possible after receipt of this order;

2.2 That the Respondent be interdicted from disconnecting the water supply to the Library Mansions situated at 55 Charles Street, Bloemfontein, pending the final resolution of all disputes between the Applicant and the Respondent regarding the municipal property rates and water accounts;

2.3 That the Respondent provide the Applicant with the outcome of the dispute lodged against the proposed rates and taxes and water amounts levied on the accounts of the Applicant within thirty (30) days of this order;

3. That the relief in paragraph 2.1, 2.2 and 2.3 above should serve in the interim with immediate effect.

4. That the costs of this application shall be paid by the Respondent on a scale as between Attorney and client scale.”

[5] On 23 August 2018 the Rule Nisi was extended to 13 September 2018 to the opposed motion roll.

- [6] On 13 September 2018 the parties informed me that they have discussed the matter and agreed on certain issues and had a draft order which was handed up. Therefore the court only need to determine the issue of costs.
- [7] Advocate Rautenbach Counsel for the Applicant in oral arguments submitted that the Applicant had no choice but to approach the court for relief, as the Applicant had raised a dispute that the Respondent failed to respond too. He submitted that the Respondent had to prove how the amount was acquired. He said the Applicant approached court for the relief sought as the Respondent did not resolve the dispute and nor did the Respondent give the Applicant the outcome of the dispute that was lodged by the Applicant. He submitted that the Applicant is entitled to costs incurred for instituting court action against the Respondent, and such costs to be on an attorney client scale.
- [8] Advocate Johnson, counsel for the Respondent submitted in oral argument that the Respondent tendered costs of the Applicant up to the opposing affidavit and the Applicant accepted the tender. He mentioned that the replying affidavit of the application had a technical defect, thus the Applicant when approaching court his hands were also not clean. He said the Applicant incurred further unnecessary costs by filling more documents and annexures as a result thereof the Applicant increased the costs due to his own conduct. Counsel submitted that it would be fair and just that each party to pay their own costs, and the Respondent to pay costs up to the opposing affidavit.

- [9] One of the purpose of a costs award to a successful party is to indemnify him for the expenses to which he had been put through having been unjustly compelled to either to initiate or to defend litigation. (See **Payen Components South Africa Ltd v Bovic Gaskets CC 1999 (2) SA 409 (W) 417 D**) A cost order is not intended to be compensation for a risk to which one has been exposed but a refund of expenses actually incurred.
- [10] The guiding principles as set out in **Watken v Eggelshaw (21) [2002] JLR 1** was summarized as follows:
- (a) The court's overriding objective in considering costs is, as in everything else, to do justice between the parties;
 - (b) In many cases, that objective will be fulfilled by making an award of costs in favour of the "winning" party where a "winner" is readily apparent. In any event, the "follow event" rule can still be useful starting point;
 - (c) It is mistake, however, to strain overmuch to try to label one party as the "winner" and one the "loser" when the complexity or other circumstances of the litigation do not readily lend themselves to analysis in these terms;
 - (d) The discretion as laid down in art 2 of the Civil Proceedings Law 1956 is a wide one and ought not to be treated as fettered by any particular supposed rule of practice, other than that the discretion should be exercised judicially and broadly in accordance with the guiding principles referred to in *AEI Rediffusion Music LTD v Phonographic Performance LTD* [1999] 1 WLR 1507; [1999] 1 ALL ER 299;

(e) It is, accordingly, open to the court to have regard to any and all considerations that may have any bearing on the overriding objective of doing justice. It's task is to take an overview of the case as a whole;

(f) It is implicit in this that, even though a party would otherwise be regarded as having been "successful" justice may require that costs should not automatically follow the event."

[11] The Applicant contends that a genuine dispute was raised with the Respondent. The Respondent failed to resolve the dispute and proceeded to disconnect the water supply and thus prompted the Applicant to approach the Honourable Court on an urgent basis.

[12] The Respondent avers that the application was technically defective and thus the Applicant is not entitled to be awarded costs and that each party to pay their own costs, alternatively that the Respondent to pay the costs up to the date of the opposing affidavit and that each party pay their own costs thereafter.

[13] Indeed it is so that the Applicant had to approach the court for a dispute that the Respondent failed to resolve and this dispute was not attended to by the Respondent nor was there any outcome of the dispute and this prompted the Applicant to continue to file further annexures in respect of its application. It is thus fair and just that the Applicant be awarded with costs as the Applicant had addressed several correspondence to the Respondent, but with no success.

[14] **Section 102 (2) of the Systems Act** requires that a dispute must relate to a specific amount claimed by the municipality, in **Body**

**Corporate Croftdene Mail v Ethekwini Municipality 2012 (4)
SA 169** SCA at para 22, the court said:

“The ratepayer is required to furnish facts that would adequately enable the Municipality to ascertain or identify the disputed item or items and the basis for the ratepayer’s objection thereto. If an item is properly raised, debt collection and credit contract measures could not be implemented in regard to the item because of the provision of the subsection. But the measures could be implemented in respect of the entire amount if an item is not properly identified and a dispute in relation thereto is not properly raised.”

- [15] The Applicant’s dispute was not yet properly identified, and the Respondent had on its own admission alleged liability of the incorrect account of the Applicant. The Respondent in spite of its own admission proceeded to disconnect the water supply of the Library Mansions. The Applicant had no other relief but to approach the court on an urgent basis to interdict the Respondent from disconnection of the water supply to the building.
- [16] A party is liable to pay costs if it incurred costs unnecessarily or by following the wrong process. (see **De Villiers v Union Government 1931 206 at 23; Protea Assurance Company Ltd v Matinisi 1978 (1) Sa 963 (A)**). The Applicant in this instance did not follow the incorrect process. The Applicant from the beginning of the dispute, even before the water supply was discounted has been sending queries of the accounts to the Respondent and the respondent reacted by disconnecting the water supply. As consequence of the Respondent’s conduct the Applicant approached court for a relief.

[17] In **Enorfranki Pipeliner (Pty) Ltd and Another v Mopani District Municipality and others [2014] 2 ALL SA 493 SCA**, the court awarded costs as between Attorney and client in matters where it was concluded that the “reprehensible nature of the conduct of a Municipality warranted such an order.”

[18] I am of the view that the Applicant would not have approached the court had the Respondent resolved the dispute on the alleged accounts, instead of disconnecting the water supply while the dispute between the parties remain unresolved. As correctly stated in matter of **Enorfranki Pipeliner** supra, the conduct of the Respondent warrants a costs order against the Respondent.

[19] The Respondent disregarded the stipulation of Section 102 (2) of the Municipality 32/2000 System Act and proceeded to disconnect the water supply. Thus the consequence thereof the Applicant had no other alternative but to approach the Honourable Court to interdict the unlawful disconnection of the water and due to the conduct of the Respondent the Applicant incurred costs.-

[20] Accordingly I made the following order:

ORDER

1. The Respondent is ordered to pay the costs of the Applicant on a scale as between Attorney and Client.
2. The draft order marked X and initial by me is part of the judgement and made an order of court.

S. CHESIWE, J

JUDGE OF THE HIGH COURT
FREE STATE DIVISION, BLOEMFONTEIN

For the Applicant: Adv. Rautenbach
Instructed by: McIntyre & Van Der Post Attorneys
BLOEMFONTEIN

On Behalf of the Applicant: Adv. Johnson
Instructed by: Phatshoane Henney Attorneys
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