

**FREE STATE HIGH COURT, BLOEMFONTEIN**  
**REPUBLIC OF SOUTH AFRICA**

**Case No. : 3648/2012**

In the matter between:-

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| <b><u>IVY MOON t/a DUMISANI BUILDING SUPPLIES</u></b>                                            | First Applicant   |
| <b><u>HENNIE'S GATES</u></b>                                                                     | Second Applicant  |
| <b><u>SPEEDSPOT MOTORCYCLES</u></b>                                                              | Third Applicant   |
| <b><u>IMPERIAL GROUP (PTY) LTD</u><br/><b><u>t/a ACD KROONSTAD</u></b></b>                       | Fourth Applicant  |
| <b><u>IMPERIAL GROUP (PTY) LTD</u><br/><b><u>t/a FORD &amp; MAZDA</u></b></b>                    | Fifth Applicant   |
| <b><u>J T OTTO ELECTRICAL</u></b>                                                                | Sixth Applicant   |
| <b><u>HIGHLAND NIGHT INVESTMENTS 41 (PTY)</u><br/><b><u>LTD t/a HIGHLAND NIGHT STEEL</u></b></b> | Seventh Applicant |
| <b><u>UNITRANS MOTORS (PTY) LTD</u><br/><b><u>ORANJE TOYOTA KROONSTAD</u></b></b>                | Eighth Applicant  |

and

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| <b><u>MOQHAKA LOCAL MUNICIPALITY</u></b> | Respondent |
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| <b><u>HEARD ON:</u></b> | 28 FEBRUARY 2013 |
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| <b><u>DELIVERED ON:</u></b> | 1 MARCH 2013 |
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**JUDGMENT**

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**MOCUMIE, J**

- [1] The first to eighth applicants (the applicants) approached this court in August 2012 for relief in the following terms [Directly translated from Afrikaans]:

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- “1. The respondent be ordered to provide the applicants with a full explanation on what the exact purpose of the work on the hole (ditch/trench) in front of the applicants’ business premises within 10 days from date of this court order.
2. The respondent be ordered to provide the applicants with a program which shows how long the project is going to take and when the road will be completed or whether the program will have any impact on the business of the applicants.
3. The respondent to be ordered to keep the applicants up to date on any delays and what might cause or hamper the project’s completion or lead to a postponement of the completion.

The respondent be ordered to pay the costs of the application.”

- [2] It is common cause between the parties that the respondent, the Moqhaka Municipality, did not give notice to the residents of Kroonstad that during April 2012 a hole/trench will be excavated in the middle of Swart and Brand Streets in Kroonstad where the first to eighth applicants are residents and have businesses as it is obliged to do so in terms of section 5 of the Municipal Systems Act 32 of 2000 (*“the Municipal Systems Act”*). It is also common cause that the relief the applicants sought, had since been overtaken by events; in that the work on the trench was completed in September 2012 and as a result the application was abandoned. The applicants now only seek a costs order against the respondent.

- [4] The applicants' case is simple and could not be refuted by the respondent despite valiant attempts to do so. The respondent did not comply with its responsibility in respect of the Municipal Systems Act. The applicants had no other avenue to pursue, after repeated attempts to get the information from the respondent had failed, including a letter written to the respondent and a meeting by their attorney with one of the respondent's senior personnel.
- [5] In its defence the respondent argued that the applicants were hasty to run to court. The very demand that they were making in their letter was overtaken by events, the trench project was completed two months after the letter was received. The respondent, however, had to concede that it had not complied with its statutory obligation as prescribed in section 5(1) (c) of the Municipal Systems Act. It had to concede that to date it has not responded to the letter of demand by the applicants as prescribed by section 5(1)(b) of the Systems Act. In other words it did not notify the residents of Kroonstad, Swart and Brand street of the excavation that was going to take place within a specific period. Neither did it give the applicants any information in that regard despite their request in a letter dated July 2012.
- [6] I ask the question: What other avenue did the applicants have other than to approach this Court to enforce their rights after all attempts to get the information had been met with disdain and consequently failed? The answer has to be, None. Every citizen of this country has the right to approach

a court to enforce its rights. In order for them to be able to approach the court as is in the nature of any litigation; they had to consult an attorney and ultimately an advocate to take up their case to the point it reached yesterday in court. The matter was heard on an opposed basis.

- [7] In my view it is on that principle alone that the applicants are entitled to their costs for preparations of this application, responding to the respondent's opposing affidavit due to the unreliable and unfounded averments made in the opposing papers, including costs of counsel that had to be briefed to prepare all the papers that were necessary to file for the abandoned application.
- [8] I am certain that had the respondent being reasonable and conscious that it is using tax payers' money to drag this matter out so long, the matter could have been resolved immediately by tendering costs even before filing opposing papers that are misleading and mischievous to say the least but definitely do not reflect the true reality of this matter. I am also certain that the matter could still have been resolved at any stage before today to avoid escalating fees from the day the applicants abandoned their application. The respondent has itself to blame for this unfortunate situation. Unfortunate in that it is the taxpayers, including the applicants, once more that will bear the brunt. I am duty bound to state that it is high time that municipalities begin to think of having those responsible for unnecessary protracted litigations against the municipalities be made to pay the

wasted costs out of their own pockets. Each individual who had a direct bearing on this matter subsequent to the applicants' decision not to proceed with the application, had a responsibility to weigh the options and realise that to oppose the application for costs against the respondent in these circumstances was not a winnable case and therefore acted irresponsibly, if not irrationally, by not negotiating and striving for a settlement outside the court processes.

- [7] I have no option but to order that the respondent pay the costs of the first to eighth applicants' abandoned application, Case No: 3648/2012. Such costs to include costs of the hearing on 28 February 2013. Costs to be costs on party-and-party scale.



**B C MOCUMIE, J**

On behalf of applicants: Adv J.Y. Claasen SC  
Instructed by:  
Phatshoane Henney Inc  
Bloemfontein

On behalf of respondent: Adv C.D. Pienaar  
Instructed by:  
Rosendorff Reitz Barry  
Bloemfontein

BCM/sp