

Reportable:	YES / NO
Circulate to Judges:	YES / NO
Circulate to Regional Magistrates	YES / NO
Circulate to Magistrates:	YES / NO

IN THE HIGH COURT OF SOUTH AFRICA (NORTHERN CAPE HIGH COURT, KIMBERLEY)

Saakno: / Case number: **1555 / 2012**
Datum verhoor: / Date heard: **07 / 12 / 2012**
Datum gelewer: / Date delivered: **14 / 12 / 2012**

In the matter between:-

LANGBERG ABATTOIR CC
OLIFANTSHOEK ABATTOIR t/a
MARDUS VLEISMAR

First Applicant

Second Applicant

and

THE GAMAGARA LOCAL MUNICIPALITY
THE MUNICIPAL MANAGER : GAMAGARA
LOCAL MUNICIPALITY
MEC: DEPARTMENT OF PROVINCIAL
AND LOCAL GOVERNMENT

First Respondent

Second Respondent

Third Respondent

Coram: Lacock, J

JUDGMENT

LACOCK, J

[1] The applicants hereto applied for the following relief against the respondents:-

"2. A rule nisi be issued calling upon the Respondents to show cause at 10:00 on Friday, 19 October 2012, why the following final order should not be made:-

2.1 Declaring that the failure by the Respondents to drain and remove the Applicants' water effluent is a violation by the Respondents of its legislative and constitutional duties to provide services to communities in a sustainable manner, to promote social and economic development and to promote a safe and healthy environment.

2.2 Ordering the Respondents to take all reasonable measures to drain and remove the Applicants' water effluent;

2.3 In the alternative to prayer 2.2, directing the Respondents to enter into a service level agreement with a service provider to attend to the draining and removal of the Applicants' water effluent at the same current rate the services are rendered by the Respondents;

2.4 In the alternative to prayer 2.2 and prayer 2.3, directing the Respondents to allow the Applicants to drain and remove the Applicants' water effluent

and to dump the water effluent in the First Respondent's sewerage plant.

3. The relief requested in prayers 2 will have immediate effect, pending the finalization of this application.

4. Costs of suit be paid by the Respondents jointly and severally, the one paying the other to be absolved."

[2] The issues on the merits of the application were settled between the parties on the date of hearing of the application. However, no agreement could be reached in regard to the costs of the application, and I had been requested to determine same. Adv. Stanton for the applicants submitted that each party should pay its own costs, whilst Adv van Aswegen for the respondents, submitted that the applicants should be ordered to pay the respondents' costs.

[3] To my mind, Mr van Aswegen is correct.

[4] There is nothing in the papers to substantiate the applicants' claim for the relief sought in paragraph 2.1 of the notice of motion. The respondents, and more particularly the first and second respondents, had at all relevant times appreciated and accepted the statutory

duties and responsibilities of the first respondent to remove the applicants' water effluent.

- [5] The reasons advanced by the respondents for not removing the applicants' water effluent since May 2011, and which reasons were conveyed to the applicants even before the application was launched, are two-fold.

5.1 Firstly it was contended that the effluent of both applicants contained *inter alia* animal faeces, blood, fat, animal trimmings, paunch content and urine, and which – if discharged into the first respondent's sewerage plant – poses a potential health and safety hazard.

5.2 Secondly it was contended that the parties entered into an agreement in terms whereof the applicants agreed to pre-treat its water effluent by removing the aforesaid pollutant substances before the effluent is drained into their draining tanks. The applicants, so the respondents alleged, failed to properly pre-treat its water effluent as agreed.

- [6] The applicants acknowledged and admitted that an agreement as advanced on behalf of the first respondent, had been concluded between the parties. It is further admitted by the applicants that the said agreement contained a further provision i.e. that the applicants were

obliged to submit a monthly certificate of compliance issued by a health expert confirming the proper pre-treatment of its water effluent. It is common cause that the applicants failed to comply with its latter contractual obligation. No certificate of compliance had been submitted to the first respondent since the first respondent discontinued its services.

- [7] By reason of the aforesaid, the applicants were not entitled to the further relief claimed in its notice of motion.
- [8] The settlement which was made an order of Court is in essence a mirror image of the agreement concluded prior to the launching of the agreements.
- [9] For these reasons, I conclude that the respondents are entitled to a cost order in their favour, and that an order whereby each party is to pay its own costs is not justified.
- [10] Wherefore, in addition to the order made on 7 December 2012, the following order is made:

**THE APPLICANTS ARE ORDERED TO PAY THE
RESPONDENTS' COSTS.**

**HJ LACOCK
JUDGE**

<u>For the Applicants:</u>	Adv. A Stanton oio Elliott, Maris, Wilmans & Hay
<u>For the Respondents:</u>	Adv. Aswgen oio Haarhoffs Inc.