

REPUBLIC OF SOUTH AFRICA**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG****Case no: 25039/2021**

(1)	REPORTABLE: No
(2)	OF INTEREST TO OTHER JUDGES: yes
<u>2022/07/29</u>	
DATE	SIGNATURE

In the matter between:

PETER TANYA MILLU**Applicant**

And

**CITY OF JOHANNESBURG METROPOLITAN
MUNICIPALITY****First Respondent****CITY POWER SOC LTD****Second Respondent**

SUPPLEMENTARY JUDGMENT

This judgment has been delivered by electronic transmission on the online database of the Gauteng Division of the High Court of South Africa, Johannesburg, on 29 April 2024 at 12h00 and by email transmission to the attorneys of record.

Per Sutherland DJP:

- [1] This is a supplementary judgment to that which I handed down on 19 March 2024, [2024] ZAGJHC 291 (GJ). It should read as an appendix to that judgment.
- [2] The supplementary judgment became necessary because of the orders made in that judgment as follows:

‘Mr Ngwana, the legal advisor must make representations within 10 days of the service of this order in which he offers reasons why he should not personally be ordered to pay 10% of the costs incurred; a failure to timeously deliver such representations shall result in a supplementary order being made to that effect.

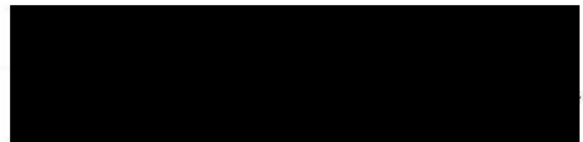
This judgment must be brought to the attention of the Mayor, the City Manager, the Head of revenue collection in the City and to the chief legal advisor.’
- [3] Mr Ngwana has filed an affidavit, as ordered. In it he addresses why, in his view, he should not personally share with the City, the obligation to pay the costs order.
- [4] In this affidavit the deponent explains his personal role as a mere conduit for City Power, the entity which is responsible for the operational aspects of supplying electricity and computing what is owed by the householder for that service.

- [5] He further explains that in regard to the nub of this case, ie the failure to file heads of argument, he was induced to believe that this obligation could be excused by addressing the dispute over accurate billing by operational means carried out by City Power. By such means, so was the intention, the dispute would be settled. The decision to take this step might have originated from Mr Baloyi the instructing attorney, but the statement on this score is not wholly clear. The flaw in this reasoning is that such a decision cannot be taken unilaterally.
- [6] I am satisfied that Mr Ngwana's role is indeed that of a mere minion in the organisational arrangement of the City for dealing with this category of dispute. Accordingly, I am satisfied that he ought not to share in the burden of paying the costs order. I accept his declaration of bona fides. I have already addressed the role of the legal practitioners and say no more on that aspect.
- [6] It bears mention that the intrinsic dysfunctionality in the administration of the City, as regards this category of dispute, upon which I have commented adversely in the principal judgment, is vividly corroborated by these revelations.
- [7] The experience of the householder as described in this matter is no aberration. In the principal judgment I alluded to the observation of Strydom J on a similar debacle in which it seems the same legal team from the City were implicated. As fate would have it, Chetty J handed down, on 5 April 2024, an extensive and comprehensive judgment dealing with the same genus of dysfunctionality in the billing by the City. (*Ackerman v City of Johannesburg and others* [2024] ZAGJHC 334 (GJ)) The pattern of administrative failure that ends up in litigation at the expense of the ratepayers is a disgrace.

- [8] The crisis of accountability – or rather, the lack thereof – in public institutions must be arrested. The suggestion that the executive officers of the City be cited in their personal capacities seems an appropriate practice to be adopted by litigation attorneys and I encourage that to be done. Accountability from those who are culpable must be exacted.

Order

No variation of the order in the principal case is necessary.



Roland Sutherland
Deputy Judge President,
Gauteng Division, Johannesburg.

Heard:	4 March 2024
Judgment:	18 March 2024.
Supplementary Judgment:	29 April 2024

Appearances:

For the Applicant:

Adv J Peter SC

Instructed by Kaveer Guinness Incorporated.

For the First and Second Respondents:

Adv E Sithole

Instructed by Madhlopa and Thenga Incorporated.