

IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, JOHANNESBURG

CASE NO: 072383/2023

DATE: 06-06-2025

DELETE WHICHEVER IS NOT APPLICABLE	
(1) REPORTABLE: YES/NO.	☒ NO
(2) OF INTEREST TO OTHER JUDGES: YES/NO.	☒ NO
(3) REVISED.	
DATE	14/8/2025
SIGNATURE	[Redacted Signature]

10 In the matter between

CILAOS BODY CORPORATE

Applicant

and

SARAH TSENGIWE

Respondent

J U D G M E N T

D'OLIVEIRA, AJ:

20 In this matter, the applicant sues one of its members, that is the respondent, for unpaid levies, water and electricity consumption and other related charges. The respondent owns property in the sectional title scheme and is a member of the scheme. She is accordingly bound by the conduct rules of the scheme and resolutions by the trustees of the body corporate or the body corporate itself that are properly adopted.

The applicant claims payment of an amount of R98 310.84. The applicant claims also that this Court authorise the sheriff to cut off or disconnect the electricity supply to the respondent in terms of its conduct rules on account of her account persistently remaining in arrears. There is no *bona fide* dispute that the respondent is liable to the applicant for unpaid levies, water and electricity consumption and related charges.

The respondent has, in her answering affidavit,
10 provided her own calculations of amounts which are owing or have been paid. However, attached to the founding affidavit is a detailed breakdown of the respondent's statement of account reflecting all amounts charged to the account and all payments made by the respondent. I find myself unable to find that the respondent's calculations can be relied upon in the face of the detailed statement put up by the applicant.

The real dispute that may exist is a dispute about legal fees and the respondent's liability to pay for the legal
20 fees charged to her account since 2019. In this regard, the regulations published under the Sectional Title Schemes of Management Act, Act 8 of 2011, provide in Regulation 25(4) as follows:

"A member is liable for and must pay to the
body corporate all reasonable legal costs

and disbursements, as taxed or agreed by the member, incurred by the body corporate in the collection of arrear contributions or any other arrear amounts due and owing by such member to the body corporate, or in enforcing compliance with these rules, the conduct rules or the Act.”

On 2 December 2021, the trustees of the body corporate
10 adopted a resolution that provided as follows, 2.2:

“An owner who is handed over to a firm of attorneys for any reason whatsoever, including, but not limited to debt collection, legal action and the sequestration of the owners, will be liable to pay the costs of the attorney's fees on a scale as between attorney and client, as charged by the attorneys / as per the invoice received from
20 the attorneys.”

The fees charged on the account of the respondent, that is, the legal fees, fall into two categories.

1. In the first category, there is an amount of R34 860.67 in legal fees that arise prior to 2 December 2021.

2. In the second category is an amount of R10 571.08 that were charged to the account of the respondent subsequent to 2 December 2021.

It seems to me that, given the provisions of the Sectional Title Schemes Management Act regulations, on the one hand, and the adoption of the resolution on 2 December 2021, on the other hand, that the Court is bound to treat these two categories of legal fees differently.

In the case of the legal fees in the first category,
10 the respondent is only liable to pay these legal fees insofar as provided for by Regulation 25(4). This does not mean that the respondent is not liable to pay for these legal fees at all. It only means that the respondent is liable to pay such legal fees as are taxed or agreed. This means that in order for the body corporate to recover these legal fees, there will have to be first either an agreement concerning the amounts of legal fees or the taxing thereof. The respondent still remains liable to pay for legal fees incurred before 2 December 2021, although as stated, as taxed or
20 agreed. The order made by this Court will need to make provision for that.

In the second category, as I have stated, is an amount of legal fees in the sum of R10 571.08. This amount of legal fees is covered, in my view, by the resolution. I have had regard to the legal fees as they appear on the

statement, and there is no concern to this Court that these charges are not reasonable within the meaning of the regulations read with the resolution. In other words, the applicant's counsel is correct, in my view, that the resolution operates as an agreement by the member, by virtue of her membership of the scheme, to legal fees as provided for in the resolution.

In the circumstances, the amount of R10 571.08 incurred or charged to the member's account after 2
10 December 2021 will have to be paid by the respondent. She is liable for those fees. The result of my calculations of the liability of the respondent, therefore, is that the respondent is liable to pay an amount of R63 443.24. This amount comprises the total amount claimed of R98 310.84, minus the legal fees arising prior to 2 December 2021, namely, the amount of R34 867.60, which is deducted from the total amount claimed.

Over and above this, the respondent raises that certain items have been attached pursuant to a court order
20 in the Magistrate's Court. The aggregate value of those items is some R6 000 or R7 000, but there is no evidence of whether these amounts have been sold in execution yet. I have also heard from the applicant's counsel and which submission I accept, that when and if those amounts are sold in execution, if there is any value obtained from them,

that will then be credited to the account of the respondent in due course. I therefore need not take them into account for the purposes of the present judgment.

Over and above this, the respondent, in its answering affidavit, raises that it will suffer hardship should there be a disconnection of its electricity, and generally informs the Court that she has done her best to meet her obligations to the body corporate. Of the latter, I have no doubt. It is apparent that the respondent is making
10 payments. It is just clear that she is unable to make all of her payments as they arise.

Although the Court would like to be of assistance to the respondent, it cannot protect the respondent against its contractual obligations. And specifically, a Court cannot protect the respondent against any hardship that arises from the respondent's failure to meet its contractual obligations as a member of the scheme. In the circumstances, the Court will make the following order:

1. The applicant shall pay arrears levies, water and
20 consumption charges, and other related amounts in the amount of R63 443.24 by 30 June 2025.
2. Failing payment of the amount in paragraph 1 of this order by 30 June 2025 by the respondent, the sheriff, is authorised to disconnect the electricity supply to the respondent's property.

3. The applicant shall forthwith reconnect the electricity supply upon payment of the amount referred to in paragraph 1 of the order.
4. The respondent is interdicted from interfering with the disconnection of her electricity supply if and when it is cut off by the sheriff in terms of this order.
5. The applicant shall be liable to pay legal fees reflecting on her account prior to 2 December 2021 as taxed or agreed. In particular, the respondent shall
10 pay such legal fees within 10 days of taxation or agreement.
6. Nothing contained in this order authorises the applicant to disconnect the electricity supply for any current charges for levies, water and electricity consumption or related amounts. For the avoidance of doubt, this order and the authorisation to disconnect the respondent's electricity supply is limited to the respondent's duty to pay the amount of R63 443.24 only.
- 20 7. The respondent shall pay the costs of this application on an attorney and client scale.

That is the end of the judgment.

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JUDGMENT

11/10

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D'OLIVEIRA, AJ

JUDGE OF THE HIGH COURT

DATE: 14/8/2025