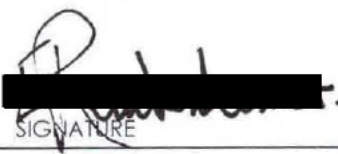


REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA,
GAUTENG DIVISION, JOHANNESBURG

CASE NO: 2024-025513

(1)	REPORTABLE: YES / ☒ NO
(2)	OF INTEREST TO OTHER JUDGES: YES / ☒ NO
(3)	REVIEWED: ☒ YES / NO
14 August 2025 DATE	
 SIGNATURE	

In the matter between:

CITY OF JOHANNESBURG METROPOLITAN
MUNICIPALITY

Applicant

And

STEYN, STEPHANUS
STEYN, LORINDA TANIS

First Respondent

Second Respondent

JUDGMENT

Raubenheimer AJ:

Order

1. The applicant is to pay the costs of the respondent on a scale as between party and party on scale B.

Introduction

2. The respondents purchased a property in a housing development scheme in 2007. The property is a residential property but was utilised for business purposes. The respondents obtained permission from the Home Owners Association (HOA) to conduct their accounting and administrative services from the premises. The property comprised of a residential unit as well as a carport.

The respondents operated their business from the premises from 2007 to 2022. During this period they were also appointed as the accountants for the HOA until 2022 when there was a dispute with the HOA as a result of which the relationship was terminated.

3. Shortly after this incident the respondents were informed that they were not in compliance with local regulations and ordinances in respect of land use. They approached a town planner to assist them with an application to rezone the premises and to apply for the approval of the building plans in respect of the carport after realising that no building plans were in existence for the said structure.
4. During July 2022 the respondents submitted an application for a Planning Permission Meeting with the applicant and was advised on 1 September 2022 to apply for a rezoning of the property and the application was submitted in January 2023, advertised in February and March 2023 and inspected in May and September 2023. The respondents were informed in August 2023 that a hearing had to be convened as there were objections to the rezoning application. The respondents were informed on 19

February 2024 that the hearing of the objections were set down for 14 March 2024 and the respondents were informed on 15 March 2024 that the application was rejected. They were also informed on 15 April 2024 that the plans for the carport was not approved as a portion of the carport encroached on the boundary line.

5. During the period between June 2022 and November 2022 the respondents were informed by an official from the applicant that a complaint had been laid about the unauthorised use of the property. This official was informed about the rezoning application.
6. The respondents were issued with contravention notices on 28 November 2022 and a final letter of demand on 14 December 2023.
7. Despite the hearing being held on 14 March 2024 and the outcome communicated to the respondents on 15 March 2024, the applicant had already launched the application for interdictory relief on 20 February 2024 and served it on the respondents on 15 March 2024. The respondents served their Notice to oppose on 25 March 2024. They did however not file an answering affidavit.
8. The carport was removed on 15 May 2024 and alternative premises for the conducting of the business was located. The applicant was informed on 21 May about the removal of the carport and the relocation to the new premises which would be occupied as from 7 June 2024.
9. Despite having complied with the letter of demand and the compliance notices the applicant enrolled the application on 20 June 2024 on the unopposed roll for 10 July 2024.
10. When the notice of set down was served on the respondents they realised that the applicant was intent on proceeding with the matter. As they had not yet filed an answering affidavit the respondents had to prepare and file the answering affidavit as well as a condonation application. This was done

on 8 July 2024.

11. The matter was then removed from the roll by Notice on 9 July 2024. The applicant then filed a replying affidavit on 19 July 2024 wherein it introduced a new cause of complaint namely the reestablishment of the boundary line and the pf the applicant occasioned by the encroachment.
12. The matter was enrolled on the opposed motion roll for 4 August 2025 as the applicant persisted with their claim for the restoration of the boundary and the payment of damages to the City Council for the damages caused by the encroachment.
13. In the run up to the appearance the parties unsuccessfully endeavoured to settle the matter as the costs proved to be an insurmountable impediment. Shortly before the matter returned to court the applicant decided not to persist with the claim for restoration of the boundary and damages. At the outset of the proceedings the parties informed me that they have agreed that the argument will only be pertaining to costs.
14. At the commencement of the proceedings the respondents informed me that in the run up to the appearance certain incidents occurred that they contained in a supplementary affidavit which they wish to place before the court as the aspects dealt with therein could have a bearing on the cost argument.
15. In correspondence exchanged between the parties the respondents intimated that an erstwhile director of the HOA was "fronting" for the applicant and could even have financed the litigation with the respondents. The applicant indicated that they would not litigate this aspect through correspondence but will argue it at the hearing on costs. The respondent consequently contained the allegations in the supplementary affidavit. I granted permission for the supplementary affidavit to be admitted after

hearing argument from both parties.

The submissions by the parties

16. Both parties had diametrically opposed views as to the aspect of costs.
17. The applicant states that they are entitled to costs as they were exercising their statutory obligations to bring the application for interdictory relief and that it is not precluded from doing so as a result of the lodging of the rezoning application and the submission of the building plans for approval.
18. The respondents state that the application was premature as they were in the process of rezoning and obtaining approval for the building plans. They furthermore contend that after the application was served on them they demolished the car port and vacated the business activities from the premises and informed the applicant of the mentioned steps. Despite being so informed the applicants proceeded to enrol the matter more than a month after being so informed on the unopposed roll prompting the respondents to file an answering affidavit. The applicants then filed a replying affidavit wherein they introduced a new cause of complaint, namely the restoration of the boundary line and the damages caused by the encroachment.

Discussion

19. The applicant bears an obligation to uphold the law¹ and to ensure its town planning regulations and ordinances are complied with.²
20. The purpose of zoning is to provide for the orderly, harmonious and effective development of a particular area and the local authority is obliged to comply

¹ United Technical Equipment Co (Pty) Ltd v Johannesburg City Council [1987] 4 All SA 409 (T)

² City of Johannesburg v Ampcor Consulting CC (7618/09) [2010] ZAGPJHC 136

and enforce compliance.³

21. The applicant was exercising a statutory duty and cannot be faulted for bringing the application to interdict the respondents.
22. The general principles in respect of costs is trite and are that the award of costs are that it is in the discretion of the judicial officer and that a successful litigant should ordinarily be awarded their costs.⁴ In the determination of the latter question the court will take cognizance of the following five factors(which is not an exhaustive list) namely: the conduct of the parties and the legal representatives, whether the success is merely technical of nature, the nature of the litigants and the nature of the proceedings ⁵
23. There are instances where a respondent would be entitled to costs such as where a respondent acceded to the relief in the application before the matter was enrolled and the applicant still persisted with the application.⁶
24. Where a litigant incurred costs in litigation that it should not have been required to initiate or defend such litigant should be entitled to its cost for the unnecessary expense incurred.⁷
25. The respondent removed the offending structure and business operation after receipt of the application. Despite being fully aware of this the applicant the proceeds to enrols the matter. The respondent invited to remove the matter from the roll and on failure would be filing an answering affidavit.
26. The applicant did not respond to the invitation causing the respondents to file an unnecessary answering affidavit. The applicants respondent by filing a replying affidavit in which it introduced a new cause of complaint namely

³ *Chapmans Peak Hotel (Pty) Ltd and another v Jab and Annalene Restaurants CC t/a O'Hagans* [2001] 4 All SA 415 (C).

⁴ *Ferreira v Levin* NO 1996 (2) SA 621 CC,

⁵ *Ferreira v Levin* (n 4 above)

⁶ *Dockray v Keep it Simple Trading (Pty) Ltd* (2022-017144) [2023] ZAGPJHC 699 (14 June 2023)

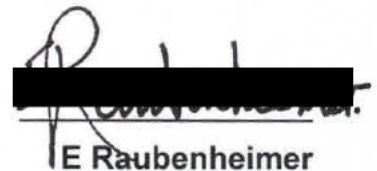
⁷ *Penny v Walker* 1936 AD 241

that the respondents should restore the boundary line and pay for damages to city property occasioned by the encroachment of the boundary lines.

27. This new cause of complaint was persisted with until shortly before the hearing scheduled for 4 August 2025 which proceeded only on the issue of costs.
28. The proceeding with the matter is entirely ascribable to the conduct of the applicant by not removing the matter from the roll when there was full compliance with the relief claimed in the notice of motion and the introduction of a new cause of complaint.

Conclusion

29. The evidence proffered by the respondent did not disclose any "fronting" or collusion between the applicant and the erstwhile director of the HOA. This application is consequently dismissed.
30. The conduct of the applicants warrants the granting of costs against the applicant.
31. I therefore grant the order contained in paragraph 1.



E Raubenheimer

**ACTING JUDGE OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION
JOHANNESBURG**

Electronically submitted

Delivered: This judgement was prepared and authored by the Acting Judge whose name is reflected and is handed down electronically by circulation to the Parties / their legal representatives by email and by uploading it to the electronic file of this matter on

CaseLines. The date of the judgment is deemed to be **14 August 2025**

COUNSEL FOR THE PLAINTIFFS:

Mr B Slatter

INSTRUCTED BY:

Nchupesang Inc

COUNSEL FOR THE RESPONDENT:

Adv K Howard

INSTRUCTED BY:

Warrender Law Attorneys

DATE OF ARGUMENT:

7 August 2025

DATE OF JUDGMENT:

14 August 2025