IN THE HIGH COURT OF SOUTH AFRICA
NORTH WEST DIVISION, MAHIKENG

Not reportable

Case no:1337/2025

In the matter between:

ZELSKE ONTWIKKELING CC	**APPLICANT**
and	
RUSTENBURG LOCAL MUNICIPALITY	**FIRST RESPONDENT**
ADV ASHMAR KHUDUGE (ACTING MUNICIPAL MANAGER)	**SECOND RESPONDENT**

Coram: WESSELS AJ

Date of hearing: 12 February 2026

Delivered: This judgment was handed down electronically by circulation to the parties' representatives via email. The date and time for hand-down of the judgment is deemed to be 10h00 on 26 March 2026.

Summary: Municipal law – Dispute resolution – Sections 95(f), 102 and 62 of Local Government: Municipal Systems Act 32 of 2000 – Consumer lodging dispute over municipal account – Municipality responding to dispute and informing consumer of right to internal appeal – Consumer failing to lodge internal appeal under s 62 – Effect – Consumer cannot rely on s 102(2) to prevent debt collection measures indefinitely – Duty to exhaust internal remedies before approaching court – Application for declaratory relief dismissed.

Practice – Urgent application – Reconsideration under Uniform Rule 6(12)(c) – Order granted after respondents' attorney appeared in court and had previously requested indulgence to file answering papers – Respondents not absent – Reconsideration dismissed.

Practice – Locus standi – Conversion of close corporation to private company during litigation – Juristic person continues to exist – Point conceded.

Costs – Point in limine persisted in for months then conceded at hearing – Costs awarded against respondent raising point – Costs of unsuccessful Part B application awarded against applicant on ordinary scale

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JUDGMENT

Wessels AJ

Introduction

[1] This matter concerns Part B of an application in which the applicant seeks declaratory relief against the first respondent. The applicant obtained urgent relief in Part A on 20 March 2025, when Koraan AJ granted an order restoring the electricity supply to the applicant's premises pending the final determination of Part B of the application.

[2] In Part B of the application, the applicant seeks final relief in the form of a declaratory order that the first respondent is precluded from implementing any debt collection or credit control measures including the termination of electricity supply in respect of the historic arrears on its account pending the resolution of the disputes declared in terms of s 102(2) of the Local Government: Municipal Systems Act[1] ('the Systems Act'). In the alternative, the applicant seeks an order directing the first respondent to resolve those disputes within 150 days, or such further period as this Court deems reasonable, and that failing such resolution, the first respondent be precluded from claiming any debt recorded in the disputes. The applicant further seeks an order amending its citation to reflect its current status as a private company, together with costs on the attorney and client scale.

Facts

[3] The applicant is the owner of Portion 214 of the Farm Waterkloof No 305 JQ, Rustenburg, a property of approximately 12 hectares in extent, utilised for tourism and hospitality purposes ('the property'). The applicant's municipal account initially reflected a debt of R1 228 710.72 raised on 6 November 2018, followed by numerous debits and credits thereafter. The applicant lodged

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[1] Local Government: Municipal Systems Act 32 of 2000.

multiple disputes with the first respondent, commencing in February 2022, for inter alia this debt, charges for services not rendered, and interest levied.

[4] Throughout this period, the applicant has consistently asserted that it remained liable for the undisputed portions of its account. In its founding and supplementary affidavits, the applicant alleges that, to give effect to this understanding and to demonstrate its bona fides, it paid the amounts it considered to be undisputed, including monthly charges for electricity consumption and other services actually rendered, into the trust account of attorneys, BMH Law Inc. This, it is contended, was done pending the resolution of the disputes, on the basis that the disputed amounts should be isolated and preserved.

[5] On 13 March 2025, despite these pending disputes, the first respondent terminated the electricity supply to the property. This led to the urgent proceedings in Part A, in terms of which the spoliation order was granted. The respondents now seek a reconsideration of that order under Uniform Rule 6(12)(c), with particular focus on the costs awarded. The respondents have also raised points in limine concerning the applicant's locus standi and an alleged failure to exhaust internal remedies under s 62 of the Systems Act. The respondents contend that, even if proven, payment into a private trust account does not constitute payment to the first respondent, and that the applicant accordingly remained in arrears. This, the respondents argue, entitled them to implement credit control measures notwithstanding the declared disputes. Given the absence of proof of such payments, I am unable to find that the applicant has met its obligation to pay undisputed amounts. This factor weighs against the grant of any equitable relief in its favour.

Application for Reconsideration

[6] The respondents seek a reconsideration of the order granted in Part A on 20 March 2025, specifically the costs order. They contend that the full factual context, particularly the applicant's alleged failure to exhaust internal remedies, was not sufficiently ventilated during the urgent proceedings, and that had this been apparent, the court might have reserved the costs for determination in Part B.

[7] Relating to the issue of reconsideration, Rule 6(12)(c) provides:

'(c) A person against whom **an order was granted in such person's absence** in an urgent application may by notice set down the matter for reconsideration of the order.' (emphasis added)

[8] It is common cause that the respondents filed a notice of intention to oppose Part A of the application. Critically, on the day before the hearing of Part A, 19 March 2025, the respondents' attorneys corresponded with the applicant's attorneys. In this communication, the respondents confirmed that they had just received instructions to come on record and, significantly, 'request[ed] your indulgence to file our Answering Affidavit by tomorrow morning, 20 March 2025.' This request for an indulgence to file an answering affidavit is a clear indication that the respondents were actively engaged in the matter, were aware of the impending hearing and had the opportunity to prepare their defence. The respondents were not caught off guard. Despite this, no opposing papers were filed.

[9] On the day of the hearing, the order was not granted ex parte as the respondents' attorney was present in court. To bring these facts within the ambit

of Rule 6(12)(c), I would have to find that the order was granted in the absence of the respondents. In *Industrial Development Corporation of South Africa v Sooliman*[2], the court held the following:

> 'The critical phrase in the rule is 'reconsideration of the order'. The rationale is to address the potential or actual prejudice because of an absence of audi alterem partem when the ex parte order was granted. The rule is not a "review" of the granting of the order. A 'reconsideration' is, as has been often said, of wide import. It is rooted in doing justice in a particular respect, i.e. to allow the full ventilation of the controversy.'

[10] The respondents were not absent. They were represented by an attorney who had, just the day before, indicated an intention to file papers. They had the opportunity to place their version before this Court, but elected not to do so. The essence of the rule is to remedy a situation where a party was genuinely absent and could not be heard. That is not the case made out by the respondents. The respondents had their day in court and chose not to participate substantively.

[11] To reconsider the costs order in these circumstances would effectively border on this Court considering the issue as a court of appeal, which it is not. The application for reconsideration is therefore dismissed.

Locus Standi

[12] The first point in limine raised by the respondents concerns the applicant's locus standi, based on its conversion from a close corporation to a private company during the course of this litigation. During argument, respondents' counsel wisely conceded this point. A conversion from a close corporation to a

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[2] *Industrial Development Corporation of South Africa v Sooliman* (2013/21466) [2013] ZAGPJHC 179; 2013 (5) SA 603 (GSJ) (18 July 2013).

private company does not terminate the existence of the juristic person, it merely changes its form. The entity continues to exist, and pending litigation may be continued by or against the converted entity. This point in limine is dismissed.

Merits

[13] The second point in limine requires more rigorous scrutiny. The respondents contend that the applicant has failed to exhaust internal remedies as provided for in s 62 of the Systems Act. Counsel for the respondents did not argue this point independently but submitted that it should be dealt with alongside the main points, given its close relation to the merits.

[14] The respondents submit that the applicant's grievances regarding the property's categorisation and billing were addressed in correspondence dated 15 December 2022 and subsequently reflected in a supplementary valuation roll. They contend that if the applicant was dissatisfied with these administrative decisions, its proper recourse was an internal appeal to the second respondent under s 62 of the Systems Act. Having failed to do so, it is further advanced, the applicant cannot now rely on the original dispute as a perpetual shield against debt collection under s 102.

The Legislative Framework

[15] To properly evaluate this point, it is necessary to consider the broader legislative framework governing municipal billing and credit control, specifically the interplay between ss 95(f), 102, and 62 of the Systems Act.

[16] Section 95(f) imposes a duty on municipalities to:

'In relation to the levying of rates and other taxes by a municipality and the charging of fees for municipal services, a municipality must, within its financial and administrative capacity—

...

(f) **provide accessible mechanisms for those persons to query or verify accounts and metered consumption, and appeal procedures which allow such persons to receive prompt redress for inaccurate accounts.'** (own emphasis)

[17] Section 102(2) provides a protective mechanism to the extent that a municipality may not implement debt control measures against persons where there is a pending dispute pertaining to a specific amount claimed by the municipality. In the interest of context, ss 102(1) and (2) read as follows:

'(1) A municipality may—

(a) consolidate any separate accounts of persons liable for payments to the municipality;

(b) credit a payment by such a person against any account of that person; and

(c) implement any of the debt collection and credit control measures provided for in this Chapter in relation to any arrears on any of the accounts of such a person.

(2) **Subsection (1) does not apply where there is a dispute between the municipality and a person referred to in that subsection concerning any specific amount claimed by the municipality from that person.'** (own emphasis)

[18] An appeal mechanism, as an internal remedy, is provided for in s 62(1). It reads:

'(1) A person whose rights are affected by a decision taken by a political structure, political office bearer, councillor or staff member of a municipality in terms of a power or duty delegated or sub-delegated by a delegating authority to the political structure, political office bearer, councillor or staff member, may appeal against that decision by giving written notice of the appeal and reasons to the municipal manager within 21 days of the date of the notification of the decision.'

[19] The principle that an aggrieved party must first exhaust internal remedies before approaching a court is a cornerstone of our administrative law. The leading authority on this point is the Constitutional Court's judgment in *Koyabe and Others v Minister for Home Affairs and Others*[3] .

[20] In *Koyabe*[4], the court articulated the rationale for this requirement as follows:

'Internal remedies are designed to provide immediate and cost-effective relief, giving the executive the opportunity to utilise its own mechanisms, rectifying irregularities first, before aggrieved parties resort to litigation.'

[21] The Constitutional Court emphasised that this duty, while valuable and necessary, must not be applied rigidly or used to frustrate an aggrieved person, as follows[5]:

'The duty to exhaust internal remedies is therefore a valuable and necessary requirement in our law. However, that requirement should not be rigidly imposed. Nor should it be used by administrators to frustrate the efforts of an aggrieved person or to shield the administrative process from judicial scrutiny. PAJA recognises this need for flexibility, acknowledging in s

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[3] *Koyabe and Others v Minister for Home Affairs and Others* (CCT 53/08) [2009] ZACC 23; 2009 (12) BCLR 1192 (CC);2010 (4) SA 327 (CC) (25 August 2009).
[4] *Ibid* fn3 para 35.
[5] *Ibid* fn3 para 38.

7(2)(c) that exceptional circumstances may require that a court condone non-exhaustion of the internal process and proceed with judicial review nonetheless.'

[22] Crucially, the Constitutional Court addressed the quality of the remedy that must be exhausted, in which regard it held[6]:

'In a constitutional democracy like ours, where the substantive enjoyment of rights has a high premium, it is important that any existing administrative remedy be an effective one. A remedy will be effective if it is objectively implemented, taking into account the relevant principles and values of administrative justice present in the Constitution and our law.'

[23] In addition, it was remarked in *Kubaye* that judicial enforcement of this duty must consider the availability, effectiveness and adequacy of the existing internal remedies.

[24] Important to the facts in this application, the Constitutional Court rejected the notion that a person could simply allow the time for an internal remedy to lapse and then proceed directly to court. The following finding in *Kobaye* is apposite[7]:

'...the mere lapsing of the time-period for exercising an internal remedy on its own would not satisfy the duty to exhaust nor would it constitute exceptional circumstances. Someone seeking to avoid administrative redress would, if it were otherwise, simply wait out the specified time-period and proceed to initiate judicial review. That interpretation would undermine the rationale and purpose of the duty. Thus, an aggrieved party must take reasonable steps to exhaust available internal remedies with a view to obtaining administrative redress.'

[25] These principles, as established in *Koyabe*, have been refined and applied specifically to municipal account disputes in *Body Corporate of Willow and Aloe*

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[6] *Op cit* fn3 para 44.
[7] *Op cit* fn3 para 47.

Grove v City of Johannesburg and Another[8]. In that matter, the court examined the legislative scheme for credit control and dispute resolution in the municipal context as follows:

'Thus, in sum, the Act requires that disputes in relation to specific charges on a municipal account must be dealt with through a co-operative structure which places obligations on both the customer and the municipality and which affords to the customer procedural fairness. This includes an internal appeal mechanism.'

[26] The court further addressed the important consequences of failing to utilise these internal mechanisms as follows:

'[100] Thus, any review process would, of necessity, entail an inquiry into whether the internal remedies available to the customer in terms of the legislative scheme have been exhausted.

[101] It is thus clear that the seeking of a mandamus against the municipality to restore a service is not as simplistic an application as many applicants to our courts, especially the urgent court, believe it to be.

[102]...

[103] **In sum, an applicant who seeks the court's assistance in restoring services must show that he is at least substantially compliant with his obligations under the dispute resolution machinery. If he is compliant then he has the automatic protections of the contractual scheme created by the Act and the bye-laws [sic].**'(emphasis added)

[27] In *Body Corporate of Willow and Aloe Grove,* the court clarified the function of a court in matters concerning a municipal dispute[9]. It was held that a

[8] *Body Corporate of Willow and Aloe Grove v City of Johannesburg and Another* (41604/2020;13541/2022) [2023] ZAGPJHC 1451 (11 December 2023).

[9] *Op cit* fn 8 paras 93 and 95.

court is not in a unique position. A court usually cannot resolve such disputes, as it lacks jurisdiction. A court's function is to see to it that the parties' respective rights are fairly accommodated within a municipality's internal procedures and the law. The function of a court is not to resolve the dispute. It must defer to the municipality in determining the dispute. To order the municipality to rectify the account would constitute an impermissible incursion into the parties' contract. From an administrative perspective, it would be an impermissible interference with decisions to be taken by the municipality.

Application to the Facts

[28] In the present matter, the applicant's attorneys have highlighted what appear to be erratic and inconsistent billing practices by the first respondent. The correspondence from the applicant's attorneys, specifically the letter dated 12 March 2025, details several significant anomalies, including a debit of R1,228,710.72 in November 2018, a levy of R1,654,110.00 in November 2020, followed immediately by a credit note of R1,932,666.67. On 8 December 2020, multiple debits and credits were applied in a single day.

[29] Such volatility in municipal accounting naturally gives rise to a 'dispute' contemplated in s 102. The applicant lodged multiple disputes, commencing in February 2022, identifying specific amounts and components of its account. To this extent, the applicant has complied with the initial phase of the dispute resolution process.

[30] The critical juncture arose when the first respondent responded to these queries. The first respondent asserts that it investigated the queries, particularly those regarding property categorisation, and communicated its decision via correspondence of 15 December 2022 and the subsequent supplementary

valuation roll. The applicant contends that these disputes remain unresolved because the first respondent has not provided a satisfactory explanation for the November 2018 debt or the subsequent debits and credits.

[31] However, the evidence reveals that on 23 August 2022, the first respondent addressed the applicant's questions about the dispute and informed the applicant of its right to appeal. This letter stated:

'1. Attached is an annexure 1 in response to the questions raised in your letter.

2. The first column is a list of questions in your letter and second column is the responses to the questions.

3. Instances where the Municipality cannot provide the requested information, reasons have been provided in terms of the Promotion of Access to Information Act no 2 of 2000.

4. **However, in terms of section 25 (3) you may lodge an internal appeal or an application with the court as the case may [sic] against the refusal of the request by submitting to the Appeal Authority within a [sic] (30) days.**' (emphasis added)

[32] However inelegant the structure of this communication from the first respondent might be, it constitutes a decision as envisaged by s 62 of the Systems Act. Applying the principles from *Koyabe* and *Body Corporate of Willow and Aloe Grove*, this decision triggered the applicant's duty to pursue the available internal remedies. Although the applicant was informed of its right to appeal, the record does not reflect that any such appeal was lodged.

[33] A consumer cannot bypass the s 62 appeal process and then rely on the original dispute as a permanent shield against debt collection in terms of s 102. To hold otherwise would allow consumers to ignore municipal decisions

indefinitely, effectively paralysing a municipality's ability to collect revenue. The statutory scheme provided for in the Systems Act requires that once a municipality has decided on a query raised in terms of s 95(f), the consumer must either accept the decision or challenge it through the s 62 appeal process. As *Koyabe* instructs, an aggrieved party must take reasonable steps to exhaust available internal remedies to obtain administrative redress. This principle was correctly articulated in *Body Corporate Croftdene Mall v Ethekwini Municipality*[10] in the following manner:

'It is, in my view, of importance that subsec 102(2) of the Systems Act requires that the dispute must relate to a 'specific amount' claimed by the municipality. Quite obviously, its objective must be to prevent a ratepayer from delaying payment of an account by raising a dispute in general terms. The ratepayer is required to furnish facts that would adequately enable the municipality to ascertain or identify the disputed item or items and the basis for the ratepayer's objection thereto. If an item is properly identified and a dispute properly raised, debt collection and credit control measures could not be implemented in regard to that item because of the provisions of the subsection. **But the measures could be implemented in regard to the balance in arrears; and they could be implemented in respect of the entire amount if an item is not properly identified and a dispute in relation thereto is not properly raised.**' (emphasis added)

[34] While ss 95(f) and 102 of the Systems Act offer initial protections against inaccurate billing and premature debt collection, they do not exist in a vacuum. Once a municipality has formally considered a dispute and rendered a decision, that decision constitutes an administrative act. If the consumer remains aggrieved, the appeal procedures mandated by s 95(f) are given practical effect through s 62.

[10] *Body Corporate Croftdene Mall v Ethekwini Municipality* (603/2010) [2011] ZASCA 188; [2012] 1 All SA 1 (SCA); 2012 (4) SA 169 (SCA) (10 October 2011) para 22.

[35] The applicant's decision to pay disputed amounts into an attorney's trust account, while perhaps showing a degree of good faith, does not constitute a valid payment to the first respondent and does not cure the failure to exhaust internal remedies. I would be remiss in my duty not to point out that no bank statements reflecting transfers to the trust account have been provided and no trust receipts or confirmatory affidavits from the attorneys holding the funds have been produced. The mere assertion in an affidavit, unsupported by corroborating documentation, falls short of the evidentiary standard required to establish payment, particularly where such payment is said to have been made not to the creditor (the first respondent) but to a third party. The applicant cannot simply invite this Court to accept its *ipse dixit* on a matter that is readily susceptible to proof. This evidentiary void undermines the weight that can be attached to the applicant's protestations of good faith.

[36] The dispute contemplated in s 102 must be managed within the framework of the Systems Act, which includes the transition from the dispute phase to the appeal phase.

Conclusion

[37] In light of the applicant's failure to exhaust the internal remedies available to it under s 62 of the Systems Act, the application for declaratory relief in Part B is premature. The applicant has not shown that it took reasonable steps to exhaust the available remedy, nor has it established exceptional circumstances that would exempt it from this requirement, as contemplated in *Koyabe*. On this basis, Part B of the application must fail.

Costs

[38] The first point in limine, concerning the applicant's locus standi, was properly conceded by the respondents' counsel during argument. Importantly, the respondents had more than sufficient time to reconsider and withdraw this point before the hearing. The answering affidavit was filed in June 2025. The matter was enrolled for hearing in February 2026. This interval of some eight months provided ample opportunity for the respondents to assess the strength of their own case and to avoid unnecessary costs by withdrawing the point timeously. They did not do so.

[39] A litigant cannot raise a point, persist with it through the exchange of papers, and then escape the costs consequences by abandoning it at the door of the court. To hold otherwise would encourage the pleading of marginal points in the hope that they might somehow succeed, without any risk of an adverse costs order. As a general rule, a party that succeeds on a point is entitled to its costs. Conversely, a party that raises a point and is unsuccessful, or that concedes a point, must bear the costs occasioned thereby.

[40] The application for reconsideration in terms of Rule 6(12)(c) has been dismissed and must suffer a similar fate. In the circumstances, it is just and equitable that the respondents bear the costs occasioned by the first point in limine and the application for reconsideration, on the ordinary party-and-party scale B.

[41] The general rule is that costs follow the result. The applicant has been unsuccessful in Part B and must bear the costs of this application. There is no justification for a punitive costs order. The matter raises no novel and complex questions. Both sides have advanced their cases reasonably. The ordinary

principles of costs will apply, and to that extent, the appropriate order should be awarded on scale B.

Order

1. The application under Part B is dismissed with costs of Part B on scale B.

2. The respondents' first point in limine and the application for reconsideration in terms of Rule 6(12)(c) are dismissed with costs on scale B.

[redacted]

M WESSELS

ACTING JUDGE OF THE HIGH COURT

NORTH WEST DIVISION, MAHIKENG

Appearances

For applicant	:Adv DH Wijnbeek
Instructed by	:Andreas Peens Attorneys
	:Koster
	:c/o Maree Maree Inc
	:Mahikeng
For the respondent	:Adv PJ Kok
Instructed by	:ME Tlou Attorneys
	:Mahikeng