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REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

CASE NO: 2025-042346

(1) REPORTABLE: NO

(2) OF INTEREST TO OTHER JUDGES: NO

(3) REVISED.

DATE: 22 APRIL 2026

SIGNATURE

UNIQON DEVELOPERS (PTY) LTD

Applicant

And

CITY OF TSHWANE METROPOLITAN MUNICIPALITY

Respondent

J U D G M E N T

DE VILLIERS AJ

- [1] At the hearing of this application, counsel for the applicant indicated that the respondent had, shortly before the hearing, furnished a written outcome in respect of the dispute that forms the subject matter of these proceedings. That letter was handed up. Counsel for both parties accepted that the substantive relief sought in the notice of motion had, in consequence, become moot, and that the only issue remaining for determination was that of costs.
- [2] The applicant persisted in seeking costs on the scale as between attorney and client. Counsel appearing for the respondent, who was only briefed late in the litigation, submitted that party-and-party costs would be sufficient. It was further submitted on behalf of the respondent that the opposition had not been pursued mala fide, but on the strength of legal advice previously obtained. Counsel also submitted that the respondent was in financial difficulty and struggled to satisfy costs orders, and that this militated against a punitive order.
- [3] The award of costs is a matter for the court's discretion, to be exercised judicially upon consideration of all the relevant facts. Although costs ordinarily follow the result, an award on the attorney-and-client scale is exceptional and is justified only where the conduct of the losing party is such as to warrant the court's disapproval and where the successful party has been put to unnecessary trouble or expense.

- [4] The broad background may be stated shortly. The applicant's property development required the consolidation of three erven. As part of that process, two of the three existing water meters had to be removed. The documentary trail placed before the court shows that the applicant's representatives engaged the respondent's officials during 2023 and 2024 concerning the removal of those meters and the correction of the billing on the relevant account to reflect such removal.
- [5] Of particular significance is the correspondence recording that the relevant meters had been removed and collected during September 2023, and the later email from Ms Angela Oliphant dated 16 July 2024, in which she stated in express terms that the water device had been removed from the premises and had to be removed from the account so that the account could be closed. Despite that, the municipal account was not corrected, and a final demand was thereafter issued in respect of account number 5[...].
- [6] On 26 November 2024 the applicant lodged a formal dispute on the respondent's prescribed form in terms of section 95(f) read with section 102(2) of the Local Government: Municipal Systems Act 32 of 2000. The form expressly requested that the dispute be registered and that the decision be made known to the applicant as soon as practicable. It also recorded that the City's administration would consider the dispute within 21 days from registration, subject to extension in extenuating circumstances.
- [7] Instead of deciding that dispute, the respondent caused summons to be issued on 12 December 2024 for payment of the disputed amount. Thereafter, despite further

correspondence from the applicant's attorneys, including a letter of 28 February 2025 recording that no decision had been received and demanding a formal response and reasons, the respondent still did not furnish a written outcome. The present application was then launched on 28 March 2025.

[8] The respondent did not meet the application by promptly regularising its position. It filed its answering affidavit late and without a satisfactory explanation covering the full period of delay. In that affidavit it adopted a robust stance, contending that the application was premature, that it was *lis pendens*, that the applicant had been answered by the summons, and that the application should be dismissed with costs.

[9] The position changed only with the letter dated 17 April 2026 that was handed up at the hearing. In that letter the respondent recorded that maintenance records confirmed that meter 0[...] had been removed on 12 September 2023 with a final actual reading of 9949; that subsequent billings had been based on estimates because of a delay in removing the meter from SAP; that all estimated charges had now been reversed; that the account reflected a balance of only R936.89 as at 27 March 2026; and that the dispute was regarded as resolved and finalised, subject to an internal appeal.

[10] That letter amounts, in substance, to a belated concession of the central premise on which the applicant approached the court. The applicant contended throughout that the meter had been removed, that the subsequent billing was wrong, and that the respondent had failed to decide the formal dispute lodged in respect of that billing. The respondent has now effectively accepted that the billing was indeed

based on estimates after the removal of the meter and that the estimated charges had to be reversed.

[11] In those circumstances, the applicant must for costs purposes, be regarded as the substantially successful party. The fact that the substantive relief is no longer required because the respondent has at last provided the decision sought does not alter the fact that the application achieved its essential objective.

[12] I do not accept that the respondent can avoid the ordinary consequences of its conduct by relying on the proposition that it acted on bad legal advice. The respondent is a metropolitan municipality exercising public powers and subject to public-law obligations. It received a formal dispute on its own prescribed form. Its own processes required a decision to be made and communicated. Instead, it issued summons for the disputed amount, opposed this application on grounds now shown to be untenable, and only much later furnished the written outcome that should have been provided in the ordinary course.

[13] Nor do I accept that the respondent's asserted financial difficulty is a proper basis for withholding an otherwise appropriate costs order. A public body's financial position cannot justify shifting onto a successful litigant the burden of costs unnecessarily incurred because the public body failed to discharge its obligations timeously and properly. If anything, financial difficulty should induce greater care in avoiding unnecessary litigation and wasted expenditure.

[14] The cumulative picture is therefore important. The respondent failed to decide the dispute within the time recorded on its own form. It issued summons while that dispute remained unresolved. It opposed mediation in the action on the footing that

there was no bona fide defence. It filed its answering affidavit late and persisted in opposing the application until the morning of the hearing, when it finally delivered a letter substantially conceding the applicant's case. The applicant was thereby put to unnecessary trouble and expense in order to secure a result which ought to have been provided administratively and much earlier.

[15] In my view, party-and-party costs would not adequately mark the court's disapproval of that conduct. This is a case in which the respondent's conduct, viewed cumulatively and objectively, warrants censure. The applicant should not be left with only a partial indemnity for costs reasonably incurred to compel the respondent to do what it should have done without litigation. A punitive order on the scale as between attorney and client is therefore justified.

[16] As a result, the following order is made:

1. The application is removed from the roll, save for the issue of costs.
2. The respondent is ordered to pay the applicant's costs of the application on the scale as between attorney and client.

C DE VILLIERS
ACTING JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA

Appearances:

Counsel for the Applicant : Adv HP Wessels
Instructed by: Van der Merwe & Associates

Counsel for the Respondent : Adv Z Marx
Instructed by: Ncube Inc Attorneys

Date heard: 20 April 2026

Date of Judgment: 22 April 2026