

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

***PETER, TANYA MILLU v CITY OF JOHANNESBURG***

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**SUMMARY**

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**Sutherland DJP**

***Procedure*** – application to strike out defence for non-compliance with order of court to file Heads of Argument – procedure allowing striking out of claim or defence for such non-compliance – directives of Special Interlocutory Court (SIC) of this Division applicable —

in motion proceedings affidavits constitute both pleadings and the evidence – proposition that striking out cannot be granted in application proceedings unless respondent's answering affidavit does not disclose defence overstated – distorted reliance on dicta in *Capitec v Mangena*

***Procedure*** – application to strike out – interests of justice – defiance of court order is serious affront to the process of court – such defiance intolerable – SIC procedure serving to protect process of court and litigants are on notice as to their accountability which courts shall exact for failures and defiant conduct

**Nature of a striking order**

striking out order a discretionary remedy - a court shall not exercise a discretion in contradiction of the interests of justice – holistic approach in exercise of such discretion appropriate –

inter alia, on the facts, the nature of relief sought in main application not final – order not resulting in City forfeiting monies – no risk of interests of justice being compromised – defiance of court order egregious - application to strike out granted with attorney and client costs

**Fees of legal representatives forfeited**– delinquency in conducting proceedings – inadequate explanation by attorney of record representing respondent on sustained pattern of delay — inaction by legal representatives not cause of inordinate delay

and defiance – reasonably evident that legal representatives were starved of substantive instructions by officials with substantive knowledge of matter - however, slavish commitment to client's interests should however not outweigh legal practitioner's duty to the court and processes of court – breach of article 60.1 of the code of conduct for Legal Practitioners – attorney interdicted from recovering fees from the City.

**Practice of Legal advisor deposing to affidavit about operational events**

practice of legal advisors deposing to affidavits in litigation with no personal knowledge of the facts discouraged – this abuse shields persons actually responsible and compromises accountability.

**Costs** – costs *de bonis propriis* against City officials – delinquency in conducting proceedings – prior judgment of this Court warning City's legal advisor of risk of punitive costs for dereliction of duty – legal advisor to depose to affidavit explaining why he should not personally pay portion of the costs.