

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

PETER, TANYA MILLU v CITY OF JOHANNESBURG

SUMMARY

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.