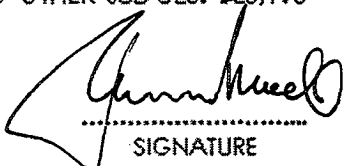




IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION, PRETORIA)

CASE NUMBER: 95141/2015

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|--|--|
| (1) | REPORTABLE: YES / NO |
| (2) | OF INTEREST TO OTHER JUDGES: YES / NO |
| (3) | REVISED. |
| <p><u>5-12-19</u> DATE</p> <p> SIGNATURE</p> | |

In the matter between:

GIYANI ENGINEERING AND CONSULTING CC

First Applicant

GIYANI GLORIA MHLANGA

Second Applicant

CALVIN MUTIZE

Third Applicant

and

MAP CIVIL AND LANDSCAPING CC

First Respondent

BRIDGET THANDEKA DUMA

Second Respondent

MOSES MAPOLISA

Third Respondent

JUDGMENT

AVVAKOUMIDES, AJ

1. This application concerns the determination of costs pertaining to prior litigation which were either not dealt with during the litigation alternatively were reserved for future determination.
2. The costs which are in dispute relate to the period 1 August 2016 to 30 August 2016. The Applicants launched an urgent application against the Respondents for the release of an amount of R300 000.00 held in trust by Snyman de Jager Attorneys in accordance with an order of Van der Westhuizen AJ (as he was then) dated 23 June 2016.
3. There is ongoing litigation between the parties relating to a tender contract with Msundudzi Municipality (Pietermaritzburg) with contract number 50/55E9 of 2014. It is unnecessary for me to relate the issues in the main litigation save to deal briefly with the sequence of events.
4. On 14 September 2016, Carrim AJ, under case number 6915/2016, issued an order at the hearing of the main litigation referring specific issues to oral evidence for determination.

5. The parties convened a pre-trial meeting before Ledwaba DJP on 21 November 2016 and are currently addressing certain issues that were raised in a further pre-trial held on 13 February 2017 in order to approach the Deputy Judge President for special allocation of the specific issues referred to oral evidence.
6. The Respondents launched an urgent application which was heard by Tuchten J culminating in an order dated 8 December 2015 in which the Applicants were substantially successful and costs of that application were ordered to be determined in the main application / action / arbitration.
7. However in terms of the order of Van der Westhuizen AJ under the above case number costs were indeed ordered against the Respondents (Applicants in this application).
8. On 2 August 2016 the Applicants launched a further urgent application which served before Molopa-Sethosa J, which was removed from the urgent roll, costs were reserved. The reason for the removal was that the bundle of papers were not properly indexed and paginated and this was the responsibility of the Applicants. The aforesaid application was re-enrolled on the urgent roll of 23 August 2016 and the Applicants filed an amended supplementary notice of motion based on the same papers.
9. Having re-enrolled the application on the urgent roll, the Applicants deemed it fit to unilaterally remove such application from the urgent roll of 30 August 2016 by way of notice. No tender for costs was made in respect of such unilateral removal.

10. On 26 September 2016 the Applicants filed a notice advising the Respondents that the same application, based on the same papers, had been re-enrolled on the further urgent roll of 27 September 2016. The application was struck off the roll for lack of urgency and the Applicants were ordered to pay the costs.
11. The Respondents endeavoured to reach amicable resolution of the costs in respect of the aforesaid litigation, to no avail.
12. It is clear from the papers filed (and not denied by the Applicants) that, in addition to the costs forming the subject matter of this application, the First Applicant also embarked on further interlocutory applications which were all dismissed with costs. These applications were brought under case number 33400/18 before Van der Schyff AJ in October 2018; case number 806397/2018 before Mabuse J in April 2019 and case number 34736/2019 before Nochumsohn AJ in June 2019.
13. Having read the papers filed herein and considered the heads of argument, I note with concern, that the Applicants' conduct in enrolling and re-enrolling one application after another, borders on vexatious litigation.
14. It is clear that the Respondents have suffered financial prejudice arising from the various ill-considered and unmeritorious litigation brought by the Applicants.
15. The Respondents (represented by the Third Applicant in person), in their heads of argument appeared to have lost sight of the main issue at hand, namely the determination of costs and who will be liable for such costs. In their heads of

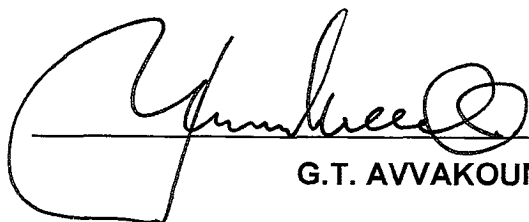
argument, the Applicants contend that the only way which a court would be able to establish who should be entitled to costs, is when both parties declare what they call reasonable. Furthermore, the Applicants contend that the Respondents have not filed their bills of costs whereas the Applicants require an account debatement. I cannot read the aforesaid in any other way than to mean that the Applicants require the Respondents to prepare and set down a bill of costs so that these costs may serve before the Taxing Master for taxation. The relevant part of the Applicants' heads of argument reads as follows:

"...only way to which the court will be able to establish who between the parties is entitled to costs, is when both parties declare whatever they call reasonable to the court as a reference point: without that, the court will only be misdirected, taking into consideration that the court has been subjected to this dispute since 2015 in failing to find lasting solutions because of the simple fact, that one party is refusing to declare whatever it calls reasonable cost to the project whereas on the other hand they require an account debatement".

16. Consequently, I am satisfied that the Respondents have made out a proper case for the relief sought in the notice of set down dated 21 August 2017, and I make the following order:

- 16.1 That the First to Third Applicants pay the costs of the application in case number 95141/2015, jointly and severally, the one paying, the others to be absolved, as follows:

- (a) The costs reserved on 2 and 3 August 2016;
- (b) The wasted costs occasioned by the enrolment and removal of the application (by First to Third Applicants) for 23 August 2016;
- (c) The wasted costs occasioned by the enrolment and removal of the application (by First to Third Applicants) for 30 August 2016;
- (d) The Respondents' costs relating to the drafting of papers in respect of the urgent application, set down for 2 August 2016;
- (e) The Respondents' costs relating to the preparation of further affidavits, including the affidavit in support of the set down for costs, replying affidavit for the set down for costs, and the supplementary affidavit dated 26 June 2019;
- (f) The Respondents' costs pertaining to the preparation and appearance for the hearing of the application on 14 October 2019



G.T. AVVAKOUMIDES

ACTING JUDGE OF THE HIGH COURT

GAUTENG DIVISION, PRETORIA

Representation for Applicants: Mr Calvin Mutize (in person)

Representation for Respondents: Adv G Jacobs

Instructed by: Gwanagura Incorporated Attorneys