

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA  
LIMPOPO DIVISION, POLOKWANE

CASE NO: HCAA13/2024

- (1) REPORTABLE: YES/NO  
(2) OF INTEREST TO THE JUDGES: YES/NO  
(3) REVISED.

DATE: 17 March 2025

SIGNATURE

[Redacted Signature]

In the matter between:

**GREATER TZANEEN MUNICIPALITY**

**APPELLANT**

-and-

**REXON SIKULIEZA SHINGWENYANA**

**FIRST RESPONDENT**

**PAULINA GRACE SHINGWENYANA**

**SECOND RESPONDENT**

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**JUDGMENT**

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**DU PLESSIS AJ:****Introduction:**

- [1] The Appellant approaches this Court on appeal, challenging the award of costs against it, which costs emanate from an application for an interdict heard on 3 August 2023 in the Limpopo Division of the High Court held at Polokwane.

**Factual Background:**

- [2] On 19 July 2023 the Appellant disconnected the electricity supply of the Respondents.
- [3] On 20 July 2023 the Respondents approached the Appellant's offices where the Appellant's employees informed the Respondents that they must pay 30% of the outstanding amount in order for the electricity to be reconnected.
- [4] This was done despite the Respondents' prior attempts to lodge a dispute in respect of an error on their account and the fact that the Respondent previously entered into a payment arrangement with the Appellant and was making payments in that regard. The Appellant previously assured the Respondent that the electricity supply would not be disconnected.
- [5] On 24 July 2023 the Respondents instructed their legal representatives to direct a letter to the Appellant in which they demanded the reconnection of the

Respondents' electricity supply. The letter once again lodged the dispute with the Appellant and requested information in respect of how the amounts of the electricity account were calculated. The Appellant was again requested to respect the payment arrangement between the parties.

- [6] It must be noted that the Respondents were both elderly people and that the late Mr. Shingwenyana suffered from diabetes and low kidney function.
- [7] Despite the Respondents' attempt to settle the matter amicably, the Appellant refused to reconnect the electricity supply. Therefore, the Respondents issued an urgent application from the Limpopo Division of the High Court held at Polokwane applying that the Appellant be directed to restore the electricity supply to the Respondents and to be interdicted from disconnecting it again.
- [8] Upon receiving the urgent application the Appellant proceeded to reconnect the electricity supply on 26 July 2023 in an attempt to prevent the urgent application from proceeding.
- [9] The Appellant's attorneys then directed a letter to the Respondents' attorneys, demanding that the urgent application be withdrawn or suspended.
- [10] In reply the Respondents' Attorneys indicated that they are willing not to proceed with the application on condition that prayers 3 and 4 of the urgent application be granted and that the costs of the application to be postponed *sine die*.
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- [11] The Appellant refused and insisted that the application should be withdrawn seeing that the harm suffered by the Respondents has been removed.
- [12] As a result of the Appellant stance, the Respondents proceeded with the urgent application.
- [13] The application was heard on 3 August 2023 and an order was made that
- 13.1 the application was dismissed; and
- 13.2 the Appellant was order to pay the costs up to 1 August 2023.
- [14] The Appellant requested written reasons for the judgment which was provided by the Court on 21 September 2023.
- [15] On 11 October 2023 the Appellant filed an Application for Leave to Appeal to the Limpopo Division of the High Court, Polokwane, which was heard on 31 January 2024 and refused by the Court.
- [16] The Appellant then approached the Supreme Court of Appeal and was granted leave to appeal to the Full Bench of the Limpopo Division of the High Court, Polokwane.

## **PARTIES SUBMISSIONS**

- [17] The Appellant submits that it is entitled to an order setting aside the cost order granted against it on 19 July 2023. The main reason being that the awarding of costs was based on the fact that the Appellant simply applied its by-laws by merely requiring the Respondents to pay 30-50% of their outstanding debt before their services would be reconnected.
- [18] The Appellant further submitted that the costs should not have been granted against them, seeing that the matter has become moot and the application was dismissed by the court *a quo*.
- [19] The Respondents submitted that the Appellants would not have reconnected their electricity supply had they not brought the urgent application. They were compelled by the conduct of the Appellants to incur legal expenses and to instruct counsel to bring the application on their behalf.

### **DISCUSSION**

- [20] A court of appeal will generally be very loathe to interfere with an order as to the award of costs. Appeal against cost orders are therefore an exception rather than a norm. In **Hotz and Others v University of Cape Town (CCT280/16) [2017] ZACC 10; 2017 (7) BCLR 815 (CC); 2018 (1) SA 369 (CC) at paragraphs 25 and 28**, the Constitutional Court stated as follows in this regard:

“[25] In *Trencon Construction (Pty) Ltd v Industrial Development Corporation of South Africa* [2015] ZACC 22; 2015 (5) SA 245 (CC); 2015 (10) BCLR

1199 (CC) *this Court dealt with the power of an appellate court to interfere with the High Court's order. It held that the proper approach on appeal is for an appellate court to ascertain whether the discretion exercised by the lower court was discretion in the true sense or whether it was a discretion in the loose sense. The distinction in either type of discretion, the Court held, "will create the standard of the interference that an appellate court must apply". This Court remarked, per Khampepe J, that "[a] discretion in the true sense is found where the lower court has a wide range of equally permissible options available to it". In such instances, the ordinary approach on appeal is that the "the appellate court will not consider whether the decision reached by the court at first instance was correct, but will only interfere in limited circumstances; for example, if it is shown that the discretion has not been exercised judicially ...". This type of discretion has been found by this Court in many instances, including matters of costs ...". The question remains whether the High Court, in considering the relevant circumstances and available options, judicially exercised its discretion in mulcting the applicants with costs..."*

And further at paragraph 28: -

*"[28] It is established that a court of first instance has discretion to determine the costs to be awarded in light of the particular circumstances of the case. Indeed, where the discretion is one in the true sense, contemplating that a court chooses from a range of options, a court of appeal will require a good reason to interfere with the exercise of that discretion. A cautious approach is, therefore, required. A court of appeal may have a different view on whether the costs award was just and equitable. However, it should be careful not to substitute its own view for*

*that of the High Court because it may, in certain circumstances be inappropriate to interfere with the High Court's exercise of discretion."*

- [21] Although the issue of costs remains in the discretion of the court, the discretion cannot be exercised arbitrarily, but must be exercised judicially on grounds upon which a reasonable person could have come to the conclusion arrived at. The approach to awarding costs is succinctly set out in **Ferreira v Levin NO and Others, Vryenhoek and Others v Powell NO and Others 1996 (2) SA 621 (CC) at paragraph 3:**

*"The Supreme Court has, over the years, developed a flexible approach to costs which proceeds from two basic principles, the first being that the award of costs, unless expressly otherwise enacted, is in the discretion of the presiding judicial officer, and the second that the successful party should, as a general rule, have his or her costs. Even this second principle is subject to the first. The second principle is subject to a large number of exceptions where the successful party is deprived of his or her costs. Without attempting either comprehensiveness or complete analytical accuracy, depriving successful parties of their costs can depend on circumstances such as, for example, the conduct of parties, the conduct of their legal representatives, whether a party achieves technical success only, the nature of the litigants and the nature of the proceedings. I mention these examples to indicate that the principles which have been developed in relation to the award of costs are by their nature sufficiently flexible and adaptable to meet new needs which may arise in regard to constitutional litigation..."*

- [22] In view of the above explanation, it cannot therefore be assumed that just because the application in the court *a quo* was dismissed, that the costs would not be awarded to the Applicant. The learned Judge exercised his judicial



discretion by taking the parties conduct into consideration when making the order.

- [23] For an appeal to succeed on costs, the Appellant must demonstrate exceptional circumstances warranting interference with the order as to costs. In **Naylor and Another v Jansen (508/05) [2006] ZASCA 94; [2006] SCA 92 (RSA); 2007 (1) SA 16 (SCA) at paragraph 10**, the Supreme Court of Appeal stated as follows in this regard:

*"The Supreme Court has, over the years, developed a flexible approach to costs which proceeds from two basic principles, the first being that the award of costs, unless expressly otherwise enacted, is in the discretion of the presiding judicial officer, and the second that the successful party should, as a general rule, have his or her costs. Even this second principle is subject to the first. The second principle is subject to a large number of exceptions where the successful party is deprived of his or her costs. Without attempting either comprehensiveness or complete analytical accuracy, depriving successful parties of their costs can depend on circumstances such as, for example, the conduct of parties, the conduct of their legal representatives, whether a party achieves technical success only, the nature of the litigants and the nature of the proceedings. I mention these examples to indicate that the principles which have been developed in relation to the award of costs are by their nature sufficiently flexible and adaptable to meet new needs which may arise in regard to constitutional litigation..."*

- [24] In **R v Zackey 1945 AD 505 with reference to Fripp v Gibbon & Co 1913 AD 354 at 363**, the Appellate Division said the following in respect of the exercise of the discretion on costs:



*“Questions of costs are always important and sometimes difficult and complex to determine, and in leaving the magistrate a discretion the law contemplates that he should take into consideration the circumstances of each case, carefully weighing the various issues in the case, the conduct of the parties and any other circumstances which may have a bearing upon the question of costs, and then make such order as to costs as would be fair and just between the parties. And if he does this and brings his unbiased judgment to bear upon the matter and does not act capriciously or upon any wrong principle, I know of no right on the part of a Court of appeal to interfere with the honest exercise of his discretion.”*

- [25] Having regard to the aforesaid authorities, it is evident that the Acting Judge properly applied his judicial discretion in awarding the cost order against the Appellants.
- [26] The Acting Judge provided proper reasons and explained in his written Judgment dated 21 September 2023 that he was of the view that the Appellants unreasonableness and misconduct justified the award of costs against them.
- [27] On this basis, this Court is of the view that exceptional circumstances warranting the interference by a court of appeal have not been shown to exist, and that the Appellant is not entitled to the relief prayed for.

**ORDER:**

- [28] In the result the following order is made:

28.1 The appeal is dismissed with costs.

  
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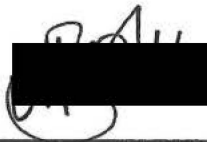
**S DU PLESSIS**  
**ACTING JUDGE OF THE HIGH COURT,**  
**LIMPOPO DIVISION, POLOKWANE**

I agree:

  
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**M NAUDE - ODENDAAL**  
**JUDGE OF THE HIGH COURT,**  
**LIMPOPO DIVISION, POLOKWANE**

I agree:

  
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**M BRESLER**  
**ACTING JUDGE OF THE HIGH COURT,**  
**LIMPOPO DIVISION, POLOKWANE**

**APPEARANCES:**

**DATE OF HEARING : 31 JANUARY 2025**

**DATE OF JUDGMENT : 17 MARCH 2025**

**FOR THE APPELLANT**

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POLOKWANE HIGH COURT