REPUBLIC OF SOUTH AFRICA

THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

JUDGMENT

Reportable

Case no: J1472/13

In the matter between:

RUDMAN, JANET **Applicant**

and

MAQUASSI HILLS LOCAL MUNICIPALITY **Respondent**

JONAS, ITUMELENG RONALD

(MUNICIPAL MANAGER) **Second Respondent**

MOTALA, MOHAMMAD IQBAL N.O. **Third Respondent**

(ADMINISTRATOR)

MAKUDUBELE, DENNIS **Fourth Respondent**

(PRESIDING OFFICER OF DISCIPLINARY ENQUIRY)

Heard: **18 July 2013**

Delivered: **30 July 2013**

Summary: Urgent application – attorneys acting without mandate – ordered to pay costs *de bonis propriis.*

JUDGMENT

STEENKAMP, J

Introduction

[1] This is the culmination of a long and unhappy history of litigation between these parties, most of it at the expense of the ratepayers of Maquassi Hills. That municipality (the first respondent) is already under administration. The ongoing disputes between the protagonists have led to appearances before at least five judges of this Court on different occasions. Most of the relief sought by the applicant has become moot. What remains, is the question of costs and who should be held responsible for those costs.

Relief sought

[2] The applicant, Ms Janet Rudman, is the Municipality's Director: Corporate Services. The Municipality and the second respondent, Mr Ronald Jonas (the Municipal Manager), brought disciplinary proceedings against her. She sought an urgent application for an order in one or more in the following terms:

> 2.1 Declaring the Second Respondent (the Municipal Manager) to lack the authority to institute and/or schedule any disciplinary proceedings against the Applicant and therefore declaring the disciplinary enquiry scheduled for 12 July 2013 to be unlawful and null and void, and setting aside the notice to attend the disciplinary enquiry dated 3 July 2013, issued by the Second Respondent;

2.2 Declaring that any disciplinary proceedings to be instituted against the Applicant, whilst the Applicant occupies the position of an acting section 56 Manager, with reference to the Municipal Systems Act[1], to be subject to the provisions of the Local Government: Disciplinary Regulations for Senior Managers, 2010;

2.3 Declaring the disciplinary procedure initiated by the notice dated 3 July 2013, issued by the Second Respondent, and the disciplinary proceedings instituted in terms thereof, to be unlawful and null and void for want of compliance with sections 4 and 5 of the Local Government: Disciplinary Regulations for Senior Managers, 2010;

2.4 Interdicting and restraining the First and Second Respondents from proceeding with the disciplinary enquiry set down for 12 July 2013, or on any other date thereafter, pending the 1st Respondent's compliance with the relevant provisions of the Local Government: Disciplinary Regulations for Senior Managers, 2010, alternatively:

2.4.1 Pending compliance with the ruling by Dennis Makudubele, the presiding officer of the disciplinary enquiry, handed down on 9 April 2013 and / or the agreement reached between the First Respondent and the Applicant on 9 April 2013;

2.5 That the First1st Respondent and the Second Respondent, in his personal capacity, are to pay the costs of this application on a scale as between attorney and own client, jointly and severally, the one paying the other to be absolved.

[3] The crux of the application was therefore premised on the principle of legality and also reliant on the Applicant's conditions of employment, flowing from her contract of employment, read with the provisions of the Local Government: Disciplinary Regulations for Senior Managers, 2010. It

[1] Act 32 of 2000.

is the Applicant's position that the Municipality is barred from proceeding with the intended disciplinary enquiry, in light of the Municipal Manager's lack of authority to institute the disciplinary proceedings.

The current status of the dispute

[4] The matter was initially set down by the Registrar to be heard on the urgent roll on 11 July 2013. On that day, the first and second respondents' purported attorneys of record, Messrs Phambane Mokone Incorporated, requested the Court (per Lagrange J) to postpone the application in order to allow them to file an answering affidavit. He ordered them to do so by 15 July 2013. They did not. Instead, on 11 July 2013, Mr Mokone Simon Phambane, who describes himself as an attorney "practising as such under the name Phambane Mokone Incorporated", filed a document styled an "affidavit of service". It was no such thing. In the affidavit, Mr Phambane sets out the history of correspondence between him and Scholtz attorneys and he says that '...the only option available to us is to attend today's proceedings [i.e. 11 July] to inform this Honourable Court that there is no disciplinary hearing scheduled on Friday 12 July 2013'. Clearly, they were still purporting to act on behalf of the first and second respondents. On 16 July, two days before this hearing, they withdrew as attorneys of record.

[5] On 8 July 2013, the administrator appointed to take care of the Municipality's affairs under administration, Mr Iqbal Motala, delivered an answering affidavit. He declared, *inter alia*, that he had met with the municipal manager, Jonas, on 4 June 2013 and it was decided that a decision on whether to continue with the applicant's disciplinary hearing would be determined after he had received all documents. He had to date not received those documents. He also expressed his surprise that Phambane Mokone were still acting, as he had instructed them in writing to cease taking instructions from the Municipality or Jonas.

[6] The Municipal Manager, Mr Jonas, did not deliver an answering affidavit as ordered by Lagrange J. At the commencement of oral argument in this hearing, on 18 July 2013, he asked leave to hand up an answering affidavit. I declined his request as he had not shown why his non-compliance with the earlier order of this Court should be condoned.

[7] The administrator has agreed to amended relief being granted by consent. The result is that the relief sought in prayers 1-4 has become moot. Only the question of costs remains.

Background

[8] The background to this application is not disputed. It is set out in the judgment of Kumalo J delivered on 14 May 2013.[2] It flows from ongoing disputes between the employee on the one hand and the Municipality's mayor and municipal manager on the other hand. In this Court, Basson J has ruled that Jonas's acting as municipal manager is unlawful; Van Niekerk J has found that the Mayor did not have the authority to oppose an urgent application on behalf of the Municipality and ordered her to pay part of the costs of the application before him in her personal capacity; and Kumalo J found that the Municipality's suspension of the applicant was unlawful and void *ab initio.* He ordered the municipal manager, Jonas, to pay the applicant's costs personally on an attorney and client scale, jointly and severally with the Municipality.

[9] It is common cause the North West Provincial Government has, since April 2013, invoked section 139(1)(b) of the Constitution and therefore assumed all executive powers of the Municipal Council and its administration. The Municipality was therefore placed under administration and the Third Respondent, Mr Iqbal Motala, was appointed as the administrator. His

[2] That judgment flows from an urgent application heard on 22 November 2012. Judgment was only handed down on 14 May 2013. For the purposes of the current application, it is important to note that Kumalo J found that the appointment of the Municipal Manager, Mr Jonas, was null and void.

administrative powers are set out in his appointment letter which states that he has to attend to all labour matters within the Municipality.

Recent developments

[10] The Municipality and the Applicant reached an agreement on 17 July 2013, the day before this hearing, in terms of which the Municipality consents to the granting of an order in the following terms:

> '1 The First and Second Respondents are interdicted from proceeding with any disciplinary enquiry against the Applicant until such disciplinary proceedings are authorised by the Third Respondent [the administrator], or by resolution by the First Respondent's Council;
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> 2 The notice to attend the disciplinary enquiry dated 3 July 2013, annexed as Annexure "A20" to the Applicant's founding affidavit, and any proceedings as a result thereof, are declared to be unlawful, null and void and set aside.'

[11] It is, accordingly, not necessary to consider the remainder of the relief sought in the notice of motion. The Applicant now simply seeks the relief agreed upon. That disposes of the dispute between the Municipality and the Applicant on the merits. The Municipality and the Applicant also agreed that the Applicant would not seek any costs order against the Municipality and that the Applicant would rather seek a punitive costs order, *de bonis propriis,* against Phambane Mokone Incorporated, as well as a punitive costs order against the Second Respondent (Jonas, the municipal manager) in his personal capacity.

Evaluation

[12] The general principle at common law is that a party who litigates in a representative capacity (such as a trustee) cannot be ordered to pay costs

de bonis propriis unless he or she has been guilty of improper conduct.[3] Such a party may however be ordered to pay such costs where there is a want of *bona fides* on his or her part or if he or she has acted negligently or unreasonably.[4] Where a legal practitioner has conducted himself in an irresponsible and grossly negligent manner in relation to the litigation such a cost order marks the Court's disapproval of the conduct.[5]

[13] In *South African Liquor Traders Association and Others v Chairperson, Gauteng Liquor Board and Others*,[6] the Constitutional Court stated:

> 'An order of costs *de bonis propriis* is made against attorneys where a court is satisfied that there has been negligence in a serious degree which warrants an order of costs being made as a mark of the court's displeasure (footnote omitted). An attorney is an officer of the court and owes a court an appropriate level of professionalism and courtesy. Filing correspondence from the Constitutional Court without first reading it constitutes negligence of a severe degree. Nothing more need be added to the sorry tale already related to establish that this is an appropriate case for an order of costs *de bonis propriis* on the scale as between attorney and client. The order is made against the office of the State attorney, not personally against the attorney concerned. This court's displeasure is primarily directed against the office of the State Attorney in Pretoria whose systems of training and supervision appear to be woefully inadequate.'

[14] In *Webb and Others v Botha*,[7] an attorney was saddled with an order to pay costs *de bonis propriis* for obstructing the interests of justice where he occasioned unnecessary costs to be incurred by all the parties to an appeal and delayed the final determination of the action, resulting in a situation which was seen as being potentially prejudicial.

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[3] *Cooper NO v First National Bank of South Africa Limited* 2001 (3) SA 705 (SCA) at para 37.
[4] *Blou v Lampert and Chipkin NNO and Others* 1973 (1) SA 1 (A) at 3G.
[5] *Khunou and Others v M Fihrer and Son (Pty) Ltd and Others* 1982 (3) SA 353 (W) at 356C; see also *Washaya v Washaya* 1990 (4) SA 41 (ZH) at 45G.
[6] 2009 (1) SA 565 (CC) at para 54.
[7] 1980 (3) SA 666 (N) at 673D-F.

[15] Considering the appropriate scale, Erasmus *Superior Court Practice*[8] points out that an award of costs as between attorney and own client has been described as 'exceptional, very punitive and as indicative of extreme *opprobrium'*. Erasmus lists various circumstances in which the courts have, over the years, awarded costs on this exceptional scale. One of the instances is where a party's conduct has been found to be "unconscionable, appalling and disgraceful".

[16] The appropriate costs scale was also considered in *Sentrachem Ltd v Prinsloo*:[9]

> 'On appeal, the Court reiterated that an award of attorney and own client costs had to be seen as an attempt by the Court to go one step further than an ordinary order of costs between attorney and client so as to ensure that the successful party was indemnified with regard to all reasonable costs of litigation. Taxation would in such cases be more liberal but would not sanction excessive or unreasonable costs. It was an extraordinary order which could not be made without good reason. (At 22B-D.) The Court was of the opinion that there was, in view of the appellant's conduct, no reason to interfere with the trial Court's award of attorney and own client costs against the appellant. (At 24D-D/E.) The appeal was accordingly dismissed.'

As Eksteen JA stated:[10]

> ''n Bevel dat die onsuksesvolle party sy teenparty se koste op die skaal soos tussen prokureur en sy eie kliënt moet betaal, moet dus gesien word as 'n poging deur die Hof om 'n stap verder te gaan as 'n gewone bevel van koste tussen prokureur en kliënt, om toe te sien dat die suksesvolle party van alle redelike koste van die litigasie gevrywaar word."

[17] In *Indwe Risk Services (Pty) Ltd v Van Zyl*,[11] Basson J held:

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[8] Erasmus *Superior Court Practice* at E12-26.
[9] 1997 (2) SA 1 (SCA) (quoting from the headnote).
[10] Ibid at 22B-C.

'I am also mindful of the fact that an order for costs *de bonis propriis* is only awarded in exceptional cases and usually where the court is of the view that the representative of a litigant has acted in a manner which constitutes a material departure of the responsibilities of his office. Such an order shall not be made where the legal representative has acted *bona fide* or where the representative merely made an error of judgment. However, where the court is of the view that there is a want of *bona fides* or where the representative had acted negligently or even unreasonably, the court will consider awarding costs against the representative. Because the representative acted in a manner which constitutes a departure from his office, the court will grant the order against the representative to indemnity the party against an account for costs from his own representative. (See in general: Erasmus Superior Court Practice" (at E12-27).)'

[18] The *Labour Relations Act*[12] specifically allows for this Court to grant *de bonis propriis* costs orders. Section 162 of the Labour Relations Act determines that:

'162 Costs

(1) The Labour Court may make an order for the payment of costs, according to the requirements of the law and fairness.

(2) When deciding whether or not to order the payment of costs, the Labour Court may take into account-

(a) whether the matter referred to the Court ought to have been referred to arbitration in terms of this Act and, if so, the extra costs incurred in referring the matter to the Court; and

(b) the conduct of the parties-

[11] (2010) 31 *ILJ* 956 (LC) at para 39.
[12] Act No 66 of 1995.

(i) in proceeding with or defending the matter before the Court; and

(ii) during the proceedings before the Court.

(3) The Labour Court may order costs against a party to the dispute or against any person who represented that party in those proceedings before the Court.'[13]

Conduct of Phambane Mokone Incorporated

[19] Mr Phambane from Phambane Mokone Incorporated has throughout the litigation between the parties before this Court continued to represent the First and Second Respondents as their attorneys of record until they withdrew two days before this hearing.

[20] It is undisputed that the Applicant had all along had serious reservations regarding Phambane Mokone Incorporated's mandate and in fact regularly contested it. The Applicant's reservations were based on the following:

21.1 Mr Jonas continued to act as the Acting Municipal Manager from 21 March 2012 until 7 June 2012, notwithstanding the fact that his term as Acting Municipal Manager, with reference to section 54A(2A)(a) of the Local Government: Municipal Systems Act[14], lapsed on 20 March 2012. Mr Jonas's continued acting was therefore not only unlawful, but also null and void in terms of section 54A(3)(b) of the Systems Act;

21.2 Serious irregularities pertaining to the manner in which a Council Meeting, held on 14 August 2012, was constituted and during which Mr Jonas was appointed as the Municipal Manager of the First Respondent.

[13] My emphasis.
[14] Act 32 of 2000 ("the Systems Act").

[21] This Court has, on two occasions, made the following factual findings in respect of Jonas's capacity as Acting Municipal Manager and Municipal Manager:

22.1 On 7 June 2012, in the Applicant's application under case number J1362/12, Gaibie AJ made an *ex tempore* ruling to the effect that Jonas's *de facto* acting as the First Respondent's Municipal Manager is unlawful and that he accordingly lacks the authority to depose to an affidavit on behalf of the Municipality;

22.2 On 14 May 2013, Kumalo AJ found Jonas's appointment as Municipal Manager to be null and void *ab initio.*

[22] Phambane Mokone Incorporated has, notwithstanding these findings, continued to accept a mandate from Jonas to represent the Municipality in matters concerning the applicant and without any Council resolution to that effect.

[23] On 27 May 2013, the appointed Administrator, Motala, wrote a letter to Mr Phambane, recording *inter alia* the following:

> 'The purpose of this correspondence is to inform you that henceforth further instructions in pending matters and instructions in new matters shall be given by me to the exclusion of all officials in the employ of the Municipality including the Municipal Manager.'

[24] On 22 April 2013, Phambane Mokone Inc became involved in the disciplinary enquiry, purportedly as attorneys of record for the Municipality. On 24 May 2013, the Applicant's attorneys of record sent a letter to Phambane Mokone Incorporated and specifically recorded the following:

> '6. Also our willingness to partake in the requested pre-hearing meeting does not suggest that our client accepts that you have been properly mandated to attend to this matter. We refer to our previous correspondence in this regard.'

[25] Despite this, Phambane Mokone proceeded to:

25.1 Address two further letters to the Applicant's attorneys of record, pursuant to service of this urgent application;

25.2 Deliver a notice of intention to oppose this application on behalf of the Municipality and the municipal manager, purportedly as their attorneys of record;

25.3 Deliver an affidavit, deposed to by Mr Phambane on behalf of the First and Second Respondents;

25.4 Attend the court proceedings on 11 July 2013 before Lagrange J, during which counsel, instructed by Messrs Phambane Mokone Incorporated, submitted the following to this Court:

26.4.1 That Phambane Mokone Inc are appearing on instructions of the First and Second Respondent and appearing as their attorneys of record;

26.4.2 That it was their instructions to seek a postponement of the proceedings in order to file an answering affidavit on behalf of the First and Second Respondents.

[26] During the proceedings of 11 July 2013, it was made clear to Messrs Phambane Mokone Incorporated that the Applicant would seek a *de bonis propriis* costs order against their firm, in light of the contents of the administrator's answering affidavit. On 12 July 2013, the Applicant's attorneys of record served a formal notice on Phambane Mokone Inc, with reference to rule 7 of the Uniform Rules of the High Court, in terms of which the Applicant challenged their mandate to represent and act on behalf of the Municipality. On 16 July 2013, Phambane Mokone Inc filed their notice of withdrawal as attorneys of record for the First and Second Respondent.

[27] I agree with Mr *Scholtz* that, Phambane Mokone Incorporated's conduct does not only constitute a material departure from their responsibilities of their office but also that required from an attorney and an officer of this Court. There can be little doubt that the notice of withdrawal was a direct response by Phambane Mokone Incorporated to the Applicant's indication that she intends to seek a *de bonis propriis* costs order against them and therefore an attempt to avoid such a costs order. They were put on terms that the applicant intended to pursue her application for such a costs order. They did not make use of the opportunity to oppose or argue that application at this hearing; instead, they withdrew two days before the hearing without any explanation by them or their supposed clients. I have no hesitation in granting the costs order sought by the applicant.

Jonas's conduct

[28] The municipal manager's conduct must be viewed in the light of the following portion of the administrator's answering affidavit:

> '…The said section provides that the Council must after consultation with the Municipal Manager fill these vacancies. The Council had failed and/or neglected its duty in this regard for a considerable period of time. As an interim measure I resolved to fill these positions by appointing incumbents in an acting capacity from within the pool of officials already in the employ of the [Municipality]. I duly consulted with [Jonas] and from the documents availed to me it was apparent that the Applicant [Rudman] was the most suitable candidate. Despite this [Jonas] was vehemently opposed to her appointment as Acting Director: Corporate Services and referred to her as a "troublemaker". Upon further probing it became apparent to me that there was a litany of litigation between the Applicant and [Jonas] resulting in [Jonas] having developed a negative attitude towards the Applicant…'

[29] It is also clear from the administrator's affidavit that he had convened a meeting with Jonas on 4 June 2013. The minutes of this meeting reflect:

> '…That a decision on whether or not to continue with the disciplinary hearing of J Rudman be determined after receipt of all documents by Administrator from LRO by 6/06.'

The minutes of this meeting were provided to Jonas by means of an email dated 22 June 2013. The administrator had not received all the documents from the Labour Relations Officer at the time of this hearing and was therefore not in a position to take a decision as to whether to proceed with my disciplinary enquiry. He states in his affidavit:

> 'My motivation for adopting the approach of carefully considering each matter before proceeding was to ensure that [the Municipality] was not mulcted in exorbitant costs by [Jonas] resulting from frivolous and vexatious proceedings based on the selective application of discipline in the workplace and vindictiveness.'

[30] It seems that this application was necessitated and brought as a result of the Jonas's actions. On the evidence before me, those actions were not only unlawful but also vindictive. That is clear if one has regard to the following:

32.1 The administrator stated in an email that:

> 'I am unfortunately in a precarious situation in that the [Municipal Manager] issued a written instruction to the security yesterday to refuse me and my team access to the premises.'

32.2 This left the administrator in a position where he felt that he had no absolute control and which immediately resulted in the notice to the applicant to attend a disciplinary enquiry dated 3 July 2013, contrary to the decision taken during the Council meeting held on 4 June 2013.

[31] The unlawfulness of Jonas's conduct is clear in the light of this Court's earlier rulings by Gaibie AJ on 7 June 2012 and Kumalo AJ on 14 May 2013. And in the judgement by Kumalo AJ of 14 May 2013, he held:

> '[58] *In casu*, there have been many instances where the first and second respondents terminated the applicant's employment contract, only to resile from that decision at the last moment before the matter is heard... This was after an urgent application to declare the applicant's suspension to be invalid, unlawful and of no legal force and effect and setting aside the same, alternatively uplifting the applicant's suspension with immediate effect or directing the respondents to reinstate the applicant and to forthwith comply with the applicant's contract of employment and conditions of service.'[15]

[32] And in another matter[16] involving the same parties, Van Niekerk J made similar remarks as to the conduct of the Municipality's officials and ordered its Mayor to pay part of the Applicant's costs in her personal capacity. Van Niekerk J remarked:

> "One might be forgiven for thinking that the residents of the Maquassi Hills Local Municipality ought to be concerned at their rates being expended on what on the face of it, appears to be fruitless litigation involving the Municipality and its employees."

[33] In a recent case of *The Speaker, Mnquma Local Municipality v Municipal Manager, Mnquma Local Municipality and Others,*[17] the High Court, under similar circumstances to those in this case, also granted an order for costs to be paid by the mayor in his personal capacity. And in the recent case of *ABSA Bank v Robb*[18] the High Court confirmed the principle that public

[15] *Rudman v Maquassi Hills Local Municipality and Another* (J2931/12) [2013] ZALCJHB 137 (14 May 2013) at para 58.
[16] *Rudman v Maquassi Hills Local Municipality & ano* (J2931/12, 29 June 2012). Leave to appeal was refused on 22 January 2013.
[17] (1383/2012) [2013] ZAECMHC 2 (18 January 2013).
[18] 2013 (3) SA 619 (GSJ) para [13] (per Boruchowitz J, Molahlehi AJ concurring).

officials may be ordered to pay costs where the circumstances of the case warrants it.

[34] Those judgments put it beyond doubt that this Court may order the municipal manager to pay the applicant's costs in his personal capacity. I now consider the appropriate scale of such an order.

[35] In *Mcpherson v Teuwen and Another,*[19] Kgomo J held:

> '[53] It is so that when awarding costs, a court has a discretion which it must exercise judiciously and after a due consideration of the salient facts of each case at that moment. The decision a court takes is a matter of fairness to both sides.
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> [54] The court is expected to take into consideration the peculiar circumstances of each case, carefully weighing the issues in each case, the conduct of the parties as well as any other circumstance which may have a bearing on the issue of costs and then make such order as to costs as would be fair in the discretion of the court. No hard and fast rules have been set for compliance and conformity by the court unless there are special circumstances.
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> See: *Fripp v Gibbon and Co* 1913 AD 354 at 364.
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> [55] Attorney and client costs are those costs which a litigant or attorney is entitled to recover on behalf of or from a client in respect of disbursements made on behalf of the client and for professional services rendered by him to and for his client. They are normally payable by the client whenever and whatever the outcome of the case. This is in contradistinction to or with party and party costs whose purpose of granting was clearly set out in *Die Voorsitter van die Dorpsraad van*

[19] (2009/27002) [2012] ZAGPJHC 18 (22 February 2012).

Schweizer-Reneke v Van Zyl 1968 (1) SA 344 (T) at 345 as follows:

"As uitgangspunt is dit nodig om in gedagte te hou dat ons te doen het met 'n kosterekening tussen party en party en dat in die algemeen gesproke die breë opset van so 'n kosterekening is om die party aan wie koste toegestaan is ten volle te vergoed vir kostes en uitgawes redelikerwys deur hom aangegaan en volgens die oordeel van die Takseermeester nodig en gepas was om reg te laat geskied of om die regte van die party te beskerm."

[56] There are rules of practice that have evolved over the years which courts follow in exercising their discretions in the award of costs, namely:

56.1 The general rule is that the successful party is entitled to his costs.

56.2 Where a successful application is made for the grant of an indulgence the general rule is that costs may not necessarily follow the event.

56.3 In determining who is the successful party the court looks to or at the substance of the judgment and not merely its form;

56.4 The court has the power to deprive a successful party of a portion of or all of his costs and, in a proper case, can order him to pay a portion or all of the costs of the unsuccessful party.

56.5 The court may order the losing party to pay the costs of the successful party on an attorney and client scale.

56.6 The court may order an unsuccessful party, suing or being sued in a representative capacity, to pay costs *de bonis propriis.*

See: *Mbekeni v Jika* 1995 (1) SA 423 (Tk).

[57] Attorney and client costs are mostly only awarded under extraordinary circumstances or where they are part of the parties' agreement. For a party to be saddled with an order of costs on attorney and client scale, such a party would most probably have acted or conducted itself mala fide and/or misconducted itself in one way or another during the litigation process. Normally, such a party would have been capricious, brazen and/or cowboyish in its approach to the litigious process and not have cared what the consequences of its acts or actions would be on the legal process and/or the other side.

….

[61] Normally an attorney and client costs order is made by courts only where there is a special prayer therefor or when notice had been given that the order will be asked for. However, the absence of such a notice is not necessarily fatal.

See: *Sopher v Sopher* 1957 (1) SA 598 (W) at 600E-G.'

[36] This is a case where the municipal manager's conduct warrants a costs order against him in his personal capacity on a punitive scale. His actions were not only *ultra vires*, but also an attempt to abuse his ostensible powers for an ulterior purpose, as is clear from the impartial evidence of the administrator. He has conducted himself in a Machiavellian fashion as described by Van Niekerk J in his judgment in a previous matter involving these parties.

Conclusion

[37] This is one of those rare cases where it is appropriate to order a *de bonis propriis* costs order against Phambane Mokone Incorporated, on a scale as between attorney and own client, as well as a similar order against the municipal manager.

Order

[38] I therefore make the following order:

38.1 The First and Second Respondents are interdicted from proceeding with any disciplinary enquiry against the Applicant until such disciplinary proceedings are authorised by the Third Respondent [the administrator], or by resolution by the First Respondent's Council.

38.2 The notice to attend the disciplinary enquiry dated 3 July 2013, annexed as Annexure "A20" to the Applicant's founding affidavit, and any proceedings as a result thereof, are declared to be unlawful, null and void and set aside.

38.3 The second respondent, Mr Itumeleng Ronald Jonas, and attorneys Phambane Mokone Incorporated are ordered to pay the applicant's costs *de bonis propriis* on an attorney and client scale, jointly and severally, the one paying, the other to be absolved.

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Steenkamp J

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Appearances

Applicant:	W P Schöltz Attorney, Potchefstroom.
First and Second Respondents:	Phambane Mokone Incorporated, Johannesburg.