

REPUBLIC OF NAMIBIA

IN THE HIGH COURT OF  
WINDHOEK  
RULING  
PRACTICE DIRECTIVE 61



NAMIBIA MAIN DIVISION,

<b>Case Title:</b>  HELVI NDILIMEKE UUSHONA  and  CITY OF WINDHOEK  REDFORCE DEBT MANAGEMENT  ALBERTUS BEBE /HUSEB	<b>Case No:</b> HC-MD-CIV-MOT-GEN-2023/00377  <b>Division of Court:</b> HIGH COURT (MAIN DIVISION)  <b>1<sup>ST</sup> RESPONDENT</b>  <b>2<sup>ND</sup> RESPONDENT</b>  <b>3<sup>RD</sup> RESPONDENT</b>
<b>Heard before:</b> HONOURABLE LADY JUSTICE PRINSLOO	<b>Date of hearing:</b> 13 September 2023  <b>Delivered on:</b> 3 October 2023
<b>Neutral citation:</b> <i>Uushona v City of Windhoek</i> (HC-MD-CIV-MOT-GEN-2023/00377) [2023] NAHCMD 611 (3 October 2023)	
<b>IT IS ORDERED THAT:</b>  1. The first respondent is ordered to pay the disbursements reasonably incurred by the applicant.  2. Such disbursements are to be taxed by the taxing master.	
<b>Reasons for orders:</b>	
PRINSLOO J:	

[1] This case emanated from an urgent application initiated by the applicant against the first- and second respondents for a mandament van spolie incorporating an interdict and certain ancillary relief *pendente lite*. The matter became settled except for the issue involving costs. The applicant is claiming costs on an attorney-client-scale against the respondents. The City of Windhoek (the COW) is the only party who opposed the application, hence, costs are only claimed against the first respondent.

[2] On 16 August 2023, the COW suspended the applicant's water and electricity supply (municipal supply) at Erf 7267, Hans Dietrich Genscher Street, Shandumbala, Katutura, Windhoek (the property), which prompted the applicant to approach this court for an order, inter alia, (a) directing the first and second respondents to restore the municipal supply of water and electricity immediately and (b) interdict and restrain the first and second respondents from terminating the municipal supply of water and electricity pending the outcome of an appeal to the Supreme Court, which appeal involves the aforementioned property. The applicant also claimed relief in the form of damages, however, such claim was abandoned.

[3] On 25 August 2023, it was submitted to this court that the municipal supply of the property was restored on 21 August 2023 and that the COW would make a concession towards the interdictory relief claimed by the applicant. The parties then indicated to the court that the only issue that remains is costs and that the parties want to argue costs.

[4] As alluded to above, the applicant is seeking an order from this court directing the COW to pay the costs incurred by her on an attorney-client scale. It is this issue that requires determination by this court.

#### Arguments advanced

##### *On behalf of the applicant*

[5] Ms Uushona, appearing in person, argued that she was compelled by the unjust actions of the respondents, as well as their violation of her constitutional right to adequate housing, to initiate legal proceedings against the respondents to defend this right and obtain justice.

[6] Ms Uushona contends that because the court granted the relief she sought, she is

regarded as the successful party and, for that reason, entitled to costs. Ms Uushona further contends that because of the COW's behaviour, she was forced to incur costs in performing tasks which would ordinarily be performed by a legal practitioner, such as perusing documents, drafting affidavits, making telephone calls, copies and initiating proceedings in court and travelling fees to appear before court. It is Ms Uushona's submission that there is no difference between the terms 'costs' and 'disbursements'.

[7] Ms Uushona argues that she is entitled to costs on an attorney-client scale, which argument is premised on the COW's alleged 'abuse of court process', its conduct which is 'frivolous, vindictive, oppressive, reckless and vexatious' and the fact that she regards herself as the 'successful party' in this application.

*On behalf of the first respondent*

[8] Mr Tjituri, for the COW, argued that the COW was, by virtue of regulation 21 of the Water Supply Regulations,<sup>1</sup> entitled to disconnect municipal supplies to the property. This regulation gives the Council for the Municipality of Windhoek the power to suspend forthwith the supply of water to a consumer who failed to pay accounts due to the council.

[9] Mr Tjituri submitted that (a) the disconnection was the result of an account registered with the council over the property, which has been in arrears for months, and (b) it is for this reason that the COW was not frivolous or malicious in suspending the municipal supplies but it 'was intended to resolve an account over which it provided municipal service'.

[10] Mr Tjituri further submits that the municipal supplies were reconnected immediately upon learning the situation on the ground and the plight of the applicant (with reference to the matter pending before the Supreme Court), and for this reason alone, the municipal supplies were restored. Mr Tjituri submits that for the above reasons, the applicant is not entitled to any costs, including disbursement, which might have been reasonably and necessarily incurred to bring this application before court.

### Discussion

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<sup>1</sup> The Water Supply Regulations promulgated under General Notice No. 367 of 16 December 1996, as amended by General Notice No. 151 of 1 July 1997. It should be noted that the first respondent merely referred to the 'Water Regulations' in its heads of argument.

[11] Save to state that the general rule is that costs follow the result, and a secondary general rule is that costs are in the discretion of the court,<sup>2</sup> I do not intend to engage in a long discussion on the traditional approach to costs in private law litigation as there have been many judgments delivered by this court in this regard. However, given the circumstances of this case, I deem it appropriate to deal with costs awarded in favour of a litigant who represented himself or herself (often referred to as 'lay litigants') more comprehensively.

[12] In respect of costs awarded to a lay litigant, rule 125(12) pertinently provides that:

'Despite rule 124 and this rule, where costs are awarded in favour of a litigant who represents himself or herself, such litigant's costs are limited to disbursements necessarily and reasonably incurred...'

(my emphasis)

[13] What the applicant struggles to grasp is that there is a distinct difference between 'costs' and 'disbursements' and 'attorney' and 'lay litigant'.

[14] In *Kamwi v Standard Bank Namibia Ltd*<sup>3</sup> Van Niekerk J, with reference to the definition of the word 'disburse', the court held as follows:

'[24] I think it is also relevant that the applicant, in his approach to the matter, ignores the essential meaning of the word 'disburse', which is 'to pay out', the noun being 'disbursement' (Collins Concise English Dictionary 3 ed 1992), which is defined as 'a paying out; that which is paid' (Chambers Twentieth Century Dictionary new edition 1972); and 'money expended' (Webster's Comprehensive Reference Dictionary and Encyclopedia).'

[15] The learned author, *Cilliers*, defines the concept of 'costs' as being the sum of money a court orders one party in proceedings to pay to another party as compensation for the expense of litigation incurred.<sup>4</sup>

[16] The Supreme Court in *Kamwi v Standard Bank Namibia Ltd*<sup>5</sup> defined a lay litigant 'as a person not professionally trained or qualified in law'.

<sup>2</sup> *Nambundu v Endobo Properties CC* (SA 87-2020) [2023] NASC (2 August 2023) at para 21.

<sup>3</sup> *Kamwi v Standard Bank Namibia Ltd* 2015 (3) NR 678 (HC) at 685I – 686B.

<sup>4</sup> A C Cilliers *Law of Costs* issue 46 par 1.03

<sup>5</sup> *Kamwi v Standard Bank Namibia Ltd* 2020 (4) NR 1038 (SC) at para 11.

[17] The general rule with regards to lay persons acting for themselves is that they are not allowed to recover fees in respect of their own time and effort in presenting or defending civil litigation but only disbursements necessitated by such litigation.<sup>6</sup> I deem it appropriate to quote the following passage by Frank AJA, also in *Kamwi v Standard Bank Namibia Ltd*, supra, where he held that:

‘Only admitted legal practitioners are allowed to represent litigants in litigation and to charge a fee in respect of such services and costs are allowed in respect of the reasonable fees charged by an admitted legal practitioner who represented a client in such litigation. Where a person represents him or herself such person obviously is not using a legal practitioner to assist him or her and hence there are no legal costs in this regard. Persons who are not admitted legal practitioners are in this respect lay persons as they are not professionally qualified in the sense that they cannot represent others in litigation.’<sup>7</sup>

[18] In *Christian v Metropolitan Life Namibia Retirement Annuity Fund*,<sup>8</sup> the applicant, who appeared in person, sought payment of all costs in that matter. The Supreme Court, however, refused to grant such an order as it held that the issue of costs does not arise except in the form of such disbursements the appellant may have reasonably incurred in pursuing the matter as he is a lay litigant.

[19] A lay litigant is only entitled to his actual disbursement reasonably incurred. Such a disbursement may or may not be the same as those prescribed where legal practitioners are involved. That is for the taxing master to determine. The concept of ‘actual disbursement reasonably incurred’ merely confirms that, in some instances actual expenses may also be unreasonably incurred.<sup>9</sup>

[20] One should not lose sight of the purpose of a cost award, which is to create a legal mechanism whereby a successful litigant may be fairly reimbursed for the reasonable legal expenses he or she was compelled to incur by either initiating or defending legal proceedings as a result of another litigant's unjust actions or omissions in the dispute. Still, one is not entitled to make a living or a profit out of lay litigation.<sup>10</sup>

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<sup>6</sup> Ibid at 1042D.

<sup>7</sup> Ibid at 1042G-H.

<sup>8</sup> *Christian v Metropolitan Life Namibia Retirement Annuity Fund* 2008 (2) NR 753 (SC) at 774I – 775A.

<sup>9</sup> *Nationwide Detectives & Professional Practitioners CC v Standard Bank of Namibia Ltd* 2007 (2) NR 592 (HC) at 599F.

[21] *Cilliers*, supra, defines attorney-and-client costs as the costs that an attorney is entitled to recover from a client for the disbursements made on behalf of the client and for professional services rendered.<sup>11</sup>

[22] The learned author further states the following regarding the granting of costs on an attorney-and-client scale:

'The ordinary rule is that the successful party is awarded costs as between party and party. An award of attorney and client costs is not lightly granted by the court: the court leans against awarding attorney and client costs, and will grant such costs only on rare occasions. It is clear that normally, the court does not order a litigant to pay the costs of another litigant on the basis of attorney and client unless some special grounds are present.'<sup>12</sup>

[23] In considering the definitions of a 'lay litigant', 'disbursements', 'costs' and 'attorney-client-scale' as set out above, it is not necessary for me to write an essay on whether the appellant is entitled to costs on an attorney-and-client scale. For the reason that the applicant is a lay litigant and not an attorney, whose only expenses were disbursements and not costs, she is not entitled to attorney-client costs.

[24] In my view, the principle is simple. The applicant is entitled to recoup her actual disbursements, reasonably incurred, without being enriched at the expense of the respondent.

[25] I am guided by the court in *Nationwide Detectives & Professional Practitioners CC v Standard Bank of Namibia Ltd*,<sup>13</sup> where Heathcote AJ, as he then was, held that: 'when granting an order of costs in favour of a lay litigant, the court should not simply use the word 'costs', but should rather make an order in terms of which the lay litigant is awarded 'costs limited to actual disbursements reasonably incurred. This is so because, per recognised definition, the concept of costs includes expenses for the labour of a qualified legal practitioner, which can never be applicable to a lay litigant.'

## Order

<sup>10</sup> *Afshani and Another v Vaatz* 2007 (2) NR 381 (SC) at 390D.

<sup>11</sup> AC Cilliers *Law of Costs* 3<sup>rd</sup> edition at 4.02.

<sup>12</sup> *Ibid* at 4.09.

<sup>13</sup> *Ibid* at 599C

[26] As a result, I make the order as set out above.	
<b>Judge's signature</b>	<b>Note to the parties:</b>
	Not applicable.
<b>Counsel:</b>	
<b>Applicant</b>	<b>First Respondent</b>
H Uushona In person, Windhoek	M Tjituri of Tjituri Law Chambers, Windhoek