

THE REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG

CASE NO: 2023/031845

- (1) REPORTABLE: NO
(2) OF INTEREST TO OTHER JUDGES: NO
(3) REVISED: YES

DATE

SIGNATURE

In the matter between:

LAWRENCE KLEIN GLEN

Applicant

and

THE VILLA MEDICI BODY CORPORATE

First Respondent

**THE TRUSTEES FOR THE TIME BEING
OF THE VILA MEDICI BODY CORPORATE**

Second Defendant

JUDGMENT

VAN EEDEN, AJ

1. In this matter the merits became moot, but costs remain in issue. The parties were unable to resolve the issue of costs, notwithstanding suggestions as to how that could be reached by the attorneys acting for both the applicant and the respondents.
2. In **Jenkins v SA Boilermakers 1946 (WLD) 15** it was held that where a disputed application is settled on a basis which disposes of the merits but does not dispose of the costs, the court should not have to hear evidence to decide the disputed facts in order to decide the issue of costs. The court must, with the material at its disposal, make a proper determination as to costs. the **Jenkins** decision has been followed on numerous occasions in this division.
3. It appears that the applicant was spoliated by the first respondent, The Vila Medici Body Corporate. The applicant obtained an *ex parte* order on 11 April 2023, with costs against the first respondent. The first respondent did not immediately comply with the court order, in consequence of which the applicant launched an urgent contempt application on 28 April 2023. In this application the Trustees for the time being of The Vila Medici Body Corporate were cited as second respondent. The matter was struck off the roll for lack of urgency, with costs.
4. It is the application for contempt that is before court today. A third person was in occupation of the property concerned and the respondents did not immediately comply with the *ex parte* order. In fact, the necessary keys that had to be provided in terms of the *ex parte* order was only provided sometime in May 2023. On 26 April 2023 the respondents gave an answering affidavit.

Paragraph 64 provided an explanation for their non-compliance with the order. It thus appears that there was some merit in launching the application during April 2023, based on non-compliance with the order obtained. In the premises the applicant is entitled to costs until 26 April 2023.

5. On or about 8 or 9 May 2023, with knowledge of what was stated in the answering affidavit, the applicant applied for a date of the hearing of the contempt application. Shortly thereafter, the respondents provided an undertaking that they will comply with the order and on 19 May 2023 the keys were handed to the applicant. Nevertheless, the applicant's attorney proceeded with the opposed application. This is explained on the basis that the applicant did not inform his attorney that he had been provided with the necessary keys. The respondents cannot be expected to pay the costs relating to the lack of communication between the applicant and his attorney.

6. I considered what should happen to the costs after this application was struck from the urgent roll. The documents reflect that the parties continued to frustrate each other, more than what was acceptable between attorneys. The respondents' attorney did not advise the applicant's attorney when the matter became moot. Both parties continued to court, filing heads of argument and practice notes and exchanging correspondence. It seems to me that in the period after the respondents provided the applicant with the necessary keys, the parties are equally to blame for the impasse that was reached. In consequence no costs order should be made in respect of this period.

7. I make the following order:

7.1. The first respondent is ordered to pay the unopposed costs of this application until before the matter was struck off the urgent roll on 26 April 2023.

H VAN EEDEN
ACTING JUDGE OF THE HIGH COURT
GAUTENG DIVISION, JOHANNESBURG

Counsel for Applicant: Adv K A Slabbert (nee Wilson)
Instructed by: DMO Attorneys

Counsel for Respondents: Adv Nicole Lombard
Instructed by: Du Toit Burger Attorneys Incorporated

Date of hearing: 18 July 2023

Date of judgment: