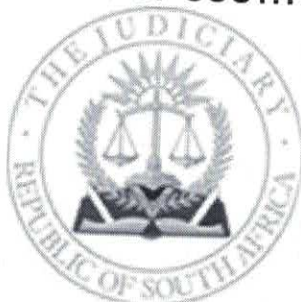



## REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA  
GAUTENG LOCAL DIVISION, JOHANNESBURG

CASE NO: 22529/2018

(1)	<u>REPORTABLE: NO</u>
(2)	<u>OF INTEREST TO OTHER JUDGES: NO</u>
(3)	<u>REVISED.</u>
22/2/2019	
DATE	SIGNATURE

In the matter between:

**SUNBIRD ESTATE BODY CORPORATE**

Applicant

and

**HOMEPROP PROPERTY GROUP**

Respondent

**J U D G M E N T****MODIBA J:**

[1] The applicant sought an order compelling the respondent to furnish certain accounting records to it. The only issue the court is required to rule on is that of costs, the main dispute having been settled between the parties.

[2] The dispute between the parties germinates from the breakdown of a contractual relationship in terms of which the respondent provided property management services to the applicant, a sectional title scheme.

[3] Ordinarily in legal disputes, costs follow the course. This matter is peculiar in that the court did not rule on the merits. When addressing the court on costs, the parties resorted to the issues that arose in the main dispute. It is on that basis that the court will determine liability for costs.

[4] Although the applicant came to court to compel the respondent to furnish documents, in its papers, it accused the respondent of financial impropriety. This became the central dispute between the parties. The respondent's basis for opposition is that it has furnished to the applicant, all documents belonging to the applicant. The applicant contends that only two boxes containing documents were delivered to it. When the respondent furnished evidence in its answering affidavit in the form of pictures, that it delivered more than two boxes of documents to the applicant, the applicant shifted stance to say the documents it seeks were not part of the documents delivered to it by the respondent.

[5] In chambers when I discussed the prospects of settlement with the parties, counsel for the applicant expressed the applicant's discontentment with the respondent's grounds of opposition, and complained that the respondent has not filed an affidavit that it does not have the documents that the applicant seeks. The matter stood down for two days while the parties attempted to settle. It is pertinent to mention that I was not part of these discussion and am not privy to them. The subsequently respondent furnished the said affidavit. Counsel for the parties then approached the court to rule on the question of costs.

[6] It was pertinent from the respondent's response in correspondence exchanged between the parties prior to the application being launched, that the respondent has furnished the applicant with all its documents, during the course of their contractual relationship in the form of management packs, and at the end of their relationship when the respondent caused documents to be delivered to the applicant. The applicant did not find the respondent's response satisfactory but never requested it to

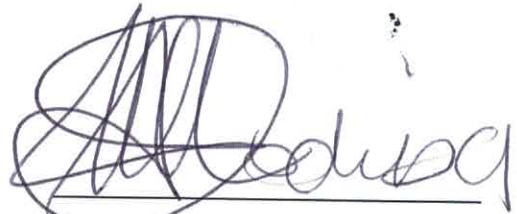
depose to an affidavit that it does not have the requested documents. It only advanced this request on the day of hearing. The respondent duly complied with the request.

[7] On the evidence before me, it appeared that the applicant did not have to come to court for the outcome it achieved in the end. A simple request to the respondent to depose to an affidavit as aforesaid, would have quashed the dispute.

[8] Under these circumstances, it is appropriate that the applicant bears the costs.

[9] I therefore make the following order:

1. The applicant shall pay the costs of the application.



**MADAM JUSTICE L T MODIBA  
JUDGE OF THE HIGH COURT  
GAUTENG LOCAL DIVISION, JOHANNESBURG**

Counsel for applicant:	Advocate C Van der Linde
Attorney for applicant:	Knowles Hussain Lindsay Inc.
Counsel for respondent:	Advocate J M Bezuidenhout
Attorney for respondent:	Nicholas Malherbe Attorneys
Date heard:	7 February 2019
Date of judgment:	22 February 2019