IN THE HIGH COURT OF SOUTH AFRICA

(NORTH WEST DIVISION, MAHIKENG)

CASE NO.: UM117/2021

In the application between:

SAKELIGA NPC	**Applicant**
and	
SEDIBENG WATER BOARD	**1st Respondent**
THE MEMBER OF THE EXECUTIVE COUNCIL: NORTH WEST PROVINCE: CO-OPERATIVE GOVERNANCE, HUMAN SETTLEMENT AND TRADITIONAL AFFAIRS	**2nd Respondent**
THE MEMBER OF THE EXECUTIVE COUNCIL: NORTH WEST PROVINCE: FINANCE	**3rd Respondent**
THE MINISTER: NATIONAL DEPARTMENT OF COOPERATIVE GOVERNANCE AND TRADITIONAL AFFAIRS	**4th Respondent**

THE MINISTER OF FINANCE	**5th Respondent**
THE MINISTER: NATIONAL DEPARTMENT OF HUMAN SETTLEMENTS, WATER AND SANITATION	**6th Respondent**
NGAKA MODIRI MOLEMA DISTRICT MUNICIPALITY	**7th Respondent**
DITSOBOTLA LOCAL MUNICIPALITY	**8th Respondent**
MAHIKENG LOCAL MUNICIPALITY	**9th Respondent**
RATLOU LOCAL MUNICIPALITY	**10th Respondent**
THE PREMIER: NORTH WEST PROVINCE	**11th Respondent**

APPLICANT'S SUPPLEMENTARY AFFIDAVIT IN SUPPORT OF COSTS

I, the undersigned,

TOBIAS VIVIAN ALBERTS

do hereby make oath and state the following:

1 I am a major male legal officer of Sakeliga NPC, with its offices at Building A, 5th Floor, Loftus Park, 402 Kirkness Street, Arcadia, Pretoria, Gauteng Province.

2 I am duly authorised to make this affidavit.

3 The facts set out in this affidavit fall within my personal knowledge, unless the contrary appears from the context hereof, and are true and correct.

4 To the extent that I make legal submissions in this affidavit, I do so on the advice of the applicant's legal representatives.

PURPOSE OF AFFIDAVIT

5 This affidavit is made in support of the applicant's application for a cost order in relation to the the application which was originally enrolled for 31 May 2021.

6 To date of this affidavit the matter has yet to be formally opposed by any of the respondents. In particular the 1st respondent against whom a cost order is sought, has failed to formally oppose the application.

7 This affidavit is made to supplement the applicant's founding affidavit. The applicant prays for a cost order on the scale as between attorney and client for the cost of the application as per prayers 6 (Part A), 3 (Part B) and 6 (Part C) of the notice of motion.

URGENT APPLICATION

8 The applicant's reasons for the urgent application is set out in the founding affidavit. Part A of the application was enrolled on the urgent roll of 31 May 2021 2021.

9 On 29 May 2021 at 20h20, the firm of attorneys known as AA Solwandle Attorneys Incorporated, Sandton, Gauteng, directed a letter to the applicant's attorneys on behalf of the 1st respondent. A copy of this letter is attached hereto as annexures **"CC1"** and **"CC2"**. In the letter the attorneys give the undertakings which the applicant's attorneys prior to the issuing of the urgent application demanded from the 1st respondent, *inter alia* that the 1st respondent withdraw its notice to employees to terminate the supply of water

and related services to the 7th – 10th respondents municipalities. The letter constitutes confirmation of the withdrawal of the 1st respondent's decision which formed the focus of the applicant's application. The attorneys however in their letter proposed that the parties agree that each party carry their own costs.

10 On 31 May 2021 the applicant's attorneys directed a letter (incorrectly dated for 28 May 2021), to the 1st respondent's attorneys indicating that the urgent application enrolled for 31 May 2021 would be removed from the roll, costs to be reserved. This was done on advice of the applicant's attorneys in order not to burden the urgent court with a cost argument. The applicant's attorneys however in their letter did indicate that the applicant did not accept the cost proposal made by the 1st respondent. A copy of this letter as well as proof of dispatch is attached hereto as annexures "**CC3**" and "**CC4**".

11 Later on 31 May 2021 a second letter was directed to the 1st respondent's attorneys. In the letter the applicant's attorneys indicated to the 1st respondent's attorneys that the further leg of the urgent application in order to deal with Part B of the application would also be removed from the roll seeing that the undertakings given by the 1st respondent implied withdrawal of their decision under review has resulted in the application becoming academic (except in as far as it relates to costs). The applicant's attorney also demanded that the 1st respondent tender the applicant's attorney and client costs by no later than 11 June 2021, failing thereto that an application will be made to this Honourable Court for a cost order. A copy of this letter and proof of dispatch is attached hereto as annexures "**CC5**" and "**CC6**".

12 I can confirm that neither the 1st respondent nor their attorneys filed any further replies to the correspondence between the parties' legal representatives. The 1st respondent has failed to tender the applicant's costs. They have failed to oppose the matter and therefore be re-enrolled for an appropriate cost order within the discretion of the court.

13 I however submit that the facts leading up to the urgent application warrants a special cost order. I however refer to the founding affidavit. The legal representatives for the applicant will deal with the matter under argument.

TV ALBERTS

THUS SWORN AND SIGNED AT PRETORIA ON THIS 10 DAY OF ~~JULY~~ August 2021, BEFORE ME, COMMISSIONER OF OATHS, THE DEPONENT HAVING ACKNOWLEDGED THAT HE UNDERSTANDS THE CONTENTS OF THIS AFFIDAVIT, HAS NO OBJECTION IN TAKING THE OATH AND REGARDS THE OATH AS BINDING ON HIS CONSCIENCE AFTER COMPLYING WITH THE REQUIREMENTS OF GOVERNMENT NOTICE R1258, DATED 21 JULY 1972, AS AMENDED.

BEFORE ME:

COMMISSIONER OF OATHS

NAME:
CAPACITY:
ADDRESS:

PETRUS GERHARDUS LOUWRENS KOEN
COMMISSIONER OF OATHS Ex Officio
PRACTISING ATTORNEY
REPUBLIC OF SOUTH AFRICA
LOFTUS VERSVELD NORTHERN PAVILION (Gate No. 12)
SECOND FLOOR, OFFICE NO. 4
416 KIRKNESS STREET, ARCADIA, PRETORIA, 0002
Tel: 087 0010 733 Fax: 086 276 4377

AASOLWANDLE
ATTORNEYS INC.
Attorneys, Notaries & Conveyancers

AA SOLWANDLE ATTORNEYS INC.
www.aasolwandleattorneys.co.za
info@aasolwandleattorneys.co.za
aasolwandle@telkomsa.net

Annexure CC1

Date: 28 May 2021
Your Ref: PJ Wassenaar/ES/QB0861
Our Ref: Sedibeng Water

Kriek Wassenaar & Venter Ing

Third Floor, HB Forum Building

13 Stamvrug Street

Val de Grace

Pretoria

Attention: Mr Peter Wassenaar

By email: peter@kriekprok.co.za

Dear Sir/ Madam

RE: SAKELIGA NPC // SEDIBENG WATER AND OTHERS - CASE NO: 117/2021

1. We act for and on behalf of Sedibeng Water Board ("our client").

2. In respect of the notice dated 25 May 2021, signed by Mr. Sibongiseni Mbadamana, and annexed to the founding affidavit, marked X3, we have been instructed by our client as follows:

   2.1 the notice was an internal communication to our client's employees and does not constitute a record of decision;

2.2 no decision, as contemplated in section 1 of the Promotion of Administrative Justice Act 3 of 2000, has been taken to terminate the provision of Operations and Maintenance services or the services for Bulk Water Supply at the various municipalities mentioned therein;

2.3 the notice shall be withdrawn on Monday, 31 May 2021.

3. Our client intends engaging with the various municipalities regarding the payment of arrears due to our client and the conclusion of contracts regulating the terms of the provision of such services.

4. In the circumstances, our client hereby undertakes to:

4.2 continue with the provision of Operations and Maintenance services at Lehurutshe, Mahikeng and Ratlou Local Municipalities; and

4.3 continue with the provision of services for Bulk Water Supply at Ditsobotla Local Municipality.

5. In the circumstances, kindly confirm that the application under case number 117/2021, will be withdrawn, with each party to pay its own costs.

Yours faithfully



Per: AA SOLWANDLE
AA SOLWANDLE ATTORNEYS INC

Email: aasolwandle@me.com
Tel: (021) 461 0933

Elbie Swanepoel

From:	Tracy McIntosh <tmcintosh@solwandle.co.za>
Sent:	29 May 2021 20:20
To:	Peter Wassenaar; Elbie Swanepoel
Cc:	mbadamanas@gmail.com; Machii Dladla; AA Solwandle
Subject:	Sakeliga NPC // Sedibeng Water and Others
Attachments:	Letter to Kriek Wassenaar and Venter Ing - 28.05.2021.pdf

Dear Sir / Madam,

Kindly find attached herewith a letter for your attention.

Kind regards,

Tracy McIntosh
Personal Assistant to Mr. AA Solwandle
AA Solwandle Attorneys Inc
Tel: (021) 461 0933
Mobile: 0722977087
Email: tmcintosh@solwandle.co.za
Website: www.aasolwandleattorneys.co.za



Attorneys, Notaries & Conveyancers
Gauteng: 15 Meadows End, Woodmead, Sandton | PO Box 110, Kelvin, 2054||Tel: 011 656 4740 | Fax: 011 656 4741
Docex 36 Halfway House
Cape Town:14th floor, 1 Thibault Square, Corner Long street and Hans Strijdom Avenue, Cape Town| Tel: 021 461 0933
Fax: 021 461 1139 Docex 3 Cape Town
Kimberly: 5 Woodley street, Kimberly Central | Tel: 053 8311501
King Williams Town: 1st Floor, Sutton Square, 10 Queens Road, King Williams Town | Tel: 043 642 1415
Port Elizabeth: 1st Floor, Harmony Building, Market street, Northend, Port Elizabeth | Tel: 041 487 3542 Fax: 086 219 2508

Annexure CC3

KRIEK WASSENAAR & VENTER ING
Prokureurs • Aktevervaardigers • Attorneys • Conveyancers

Our ref: PJ Wassenaar/es/QB0861
Your ref: Sedibeng Water

28 May 2021

AA SOLWANDLE ATTORNEYS INC
SANDTON

By e-mail: aasolwandle@me.com
aasolwandle@telkomsa.net

Sir / Madam

SAKELIGA NPC / SEDIBENG WATER

IN RE: NOTICE TO DISCONTINUE WATER SERVICE TO NGAKA MODIRI MOLEMA DISTRICT MUNICIPALITY AND OTHERS DATED 25 MAY 2021

1. We acknowledge receipt of your letter dated 28 May 2021, which was only received on 29 May 2021 at 20h20.

2. We confirm your client's undertaking to withdraw the employee notice (par 2.3 of your letter) and the undertaking to continue with the provision of bulk water supply, operational and maintenance services to the affected municipalities (par 4 of your letter).

3. In view of the aforementioned, the matter will not proceed on the urgent roll today and we have instructed our correspondent attorneys to remove the matter from the roll, with costs to be reserved.

4. Our client however does not accept your proposal that each party carry their own costs. We will deal with the issue of costs and the other averments in your letter once the matter has been removed from the roll.

5. Our further reports to follow.

Yours sincerely,

KRIEK WASSENAAR & VENTER ING
PÉTER WASSENAAR – DIREKTEUR / DIRECTOR
(f) 086 596 8516
(e) peter@kriekprok.co.za Elektronies geteken electronically signed

www.kwv-inc.com
(t) (+27) 12 756 7566• (f) (+27) 86 596 8799 (a) 3rd Floor, HB Forum Building, 13 Stamvrug Road, Val de Grace, Pretoria 0184
(p) Postnet Suite # A7, Privaatsak / Private Bag X592, Silverton, 0127 • BTW Reg: 4020260685

Direkteure/ Directors: Johan Kriek (B Proc, LLM), Péter Johannes Wassenaar (LLB)
Bygestaan deur/assisted by Tertia Johanna Wassenaar (LLB), Kayla Oosthuizen (LLB);
Konsultante / Consultants: Catherina Elizabeth Pienaar (BA, BCur, LLB, LLM, PhD) , Sylvia Adriana Venter (LLB)
• Reg: 2012/030418/21
DocDate 20210507

xnexure CC4

Elbie Swanepoel

From: Peter Wassenaar
Sent: 31 May 2021 07:59
To: aasolwandle@me.com; aasolwandle@telkomsa.net
Cc: Rohann Eloff; Tian Alberts
Subject: SAKELIGA NPC / SEDIBENG WATER
Attachments: AA Solwandle Attorneys Inc sent 20210531.pdf

Good day

Kindly see the attached letter.

Yours faithfully / Die uwe

Pèter Wassenaar
Kriek Wassenaar & Venter Ing
Direkteur / Director
• (t) (+27) 12 803 4719 (c) 0829204474
• (a) Third Floor, HB Forum Building, 13 Stamvrug Street, Val de Grace, Pretoria
• (p) Postnet Suite # A7, Privaatsak / Private Bag X592, Silverton, 0127 • BTW Reg: 4020260685 • Reg: 2012/030418/21

KRIEK WASSENAAR & VEN

AnnexureAnne CC5

KRIEK WASSENAAR & VENTER ING
Prokureurs • Aktevervaardigers • Attorneys • Conveyancers

Our ref: PJ Wassenaar/es/QB0861
Your ref: Sedibeng Water

31 May 2021

AA SOLWANDLE ATTORNEYS INC.
15 MEADOWS END
WOODMEAD
SANDTON

By e-mail: aasolwandle@telkomsa.net
aasolwandle@me.com

Sir/Madam

SAKELIGA NPC / SEDIBENG WATER AND OTHERS (CASE NO. 117/2021)

1. We refer to our letter of 31 May 2021 as well as your earlier letter dated 28 May 2021.

2. We confirm that the urgent application has been removed from the roll with cost reserved.

3. Our client rejects the purported 'non-decision' taken by your client, which led to the 'firm decision' notice to employees dated 25 May 2021. Your letter does not correspond with the employee notice nor the confirmations our Mr Wassenaar received from your client during a telephonic conversation on 26 May 2021. Whether the decision was communicated internally or externally, in any event, does not affect our client's application.

4. An instruction to employees implies that a decision was taken. In fact the employee notice itself states that *'Sedibeng Water has taken a firm decision'*. Your client's Mr Mbadamana, also confirmed on 26 May 2021 that such a decision had been taken and that the instruction to employees would disrupt the supply of water to the affected municipalities. If on the version set out in your letter of 28 May 2021, no decision was taken, why would your client's attempt to respond to our urgent application necessitate an undertaking to withdraw the instruction to employees by 31 May 2021?

5. The self-destroying version contained in your letter of 28 May 2021 is rejected.

6. Be that as it may, your client's undertakings, as contained in paragraphs 2.3 and 4 of your letter of 28 May 2021, results in our client's application being materially successful in all respects. Therefore, parts B and part C of the notice of motion has become academic.

7. Your client is required to tender the costs of the application on a scale as between attorney and client by no later than **11 June 2021**. Failing thereto, our client will have no choice but to re-enrol the matter in the ordinary course to apply for a cost order. Our client will, in such an event, be supplementing our papers. A formal application will result in further costs being incurred against your client.

8. We await your response.

Yours faithfully

KRIEK WASSENAAR & VENTER ING
PÉTER WASSENAAR – DIREKTEUR / DIRECTOR
(f) 086 596 8516
(e) peter@kriekprok.co.za

Elektronies geteken
Electronically signed

Annexure CC6

Elbie Swanepoel

From: Elbie Swanepoel
Sent: 01 June 2021 09:11
To: 'aasolwandle@telkomsa.net'; 'aasolwandle@me.com'
Subject: Sakeliga NPC / Sedibeng Water and others (Case no: 117/2021)
Attachments: AA Solwandle Attorneys Inc sent 2021-05-31.pdf

Sensitivity: Private

Good day,

We refer to the above and attach hereto a letter for your attention.

Regards,

ELBIE SWANEPOEL

Kriek Wassenaar & Venter Inc

Regsekretaresse / Legal Secretary

• *(t) (+27) 12 803 4719* • *(f) (+27) 86 596 8516*

• (a) 3de Vloer / 3rd Floor, HB Forum Gebou / Buidling, Stamvrugstraat 13 Stamvrug Street, Val de Grace, Pretoria, 0184

• *(p) Postnet Suite # A7, Privaatsak / Private Bag X592, Silverton, 0127* • *BTW Reg: 4020260685* • *Reg: 2012/030418/21*