

Always try to settle out of court

Beware attempts by a third party to exploit a dispute for purposes of financial gain

TENANTS of a block of flats are at their wits' end to secure a meeting with their landlady. They need to protect their integrity and to prevent the breakdown in their good relationship.

Every attempt to meet with their landlady is obstructed by the newly appointed "manager" who is a law unto himself.

It appears that the tenants' refusal to be extorted triggered off a series of bizarre incidents with no end in sight.

He has created a hostile environment, alienating the tenants from their landlady and done so with craft.

Investigations reveal that the "manager" has a history of similar "uncivilized" behaviour, having left a trail of destructive relationships in other buildings.

Some have come forward with information of pending alleged criminal and fraud charges.

As if the "manager" from hell was not enough, the tenants are now dealing with another representative, an attorney from hell.

The unprofessional conduct of the building "manager" is matched by the attorney's breathtaking arrogance and crude demeanor.

The attorney's contemptuous attitude towards tenants is a point of referral by an independent adjudicating body.

The "manager" was advised not to lodge a complaint, but to approach this particular attorney.

The "manager" has no respect for the legal rights of the tenants; the right to privacy, freedom of association and peace and quiet.

Basic contractual principles are also undermined with impunity.

The "manager's" voluminous circulars, littered with hysteria and diatribe, seems to be re-written with all the legal flaws, in the ink of the attorney's rage.

Professor of law, Carl Felsenfeld's pithy remark comes to life in the attorney's correspondence: "Lawyers have two common failings. One is that they do not write well and the other is that they think they do."

There are a few basic guidelines to resolve a conflict amicably.

- Sincerely endeavour to resolve a matter without incurring legal costs or minimising costs.
- Parties should rise above their differences, aiming to find solutions.

There are instances, when a third party enters the fray to "exploit" a situation for personal gain.

"Where there is a rift in the lute, the business of the lawyer is to widen the rift and gather the loot."

What Arthur G. Hays said above may hold true for the deliberate dispute and chasm created by the “manager” that is being widened by the attorney.

Avoid anger and arrogance at all cost. There is a tendency to reciprocate rage with rage especially when falsely accused.

Any response must be carefully drafted with the court in mind, based on truth and facts.

Often, it is sufficient to deny the allegations and to reserve one’s rights or the client’s rights to provide a detail response that can be done during legal action (founding, opposing or replying affidavits).

Magistrates and judges apply an objective test and do not hesitate to criticise legal practitioners and parties whose behaviour leaves much to be desired.

“I think it proper to observe that the correspondence between the attorneys was at times conducted by respondent's attorneys with a measure of acrimony and arrogance which was unjustified.”^[1]

- Do everything possible to resolve a dispute. All the attempts to do so can be presented before the court.

Parties engage the services of representatives to resolve a dispute and not for them to express their superiority that could lead to personality clashes.

^[1] Garber NO v Witwatersrand Jewish Aged Home 1985 (3) SA 460 (W) at 466

The ensuing “battle” results in scoring points and the consultations with the clients increases the legal costs.

Judges take strong exceptions to litigious attitude when matters can be resolved easily.

The interest of the client must be paramount, and should not be motivated by sheer pecuniary reasons.

Flemming DJP, in *Rubico (Pty) Ltd v Paywell (Pty) Ltd* 2001 JDR 0165 (W) states: “There is a second angle. An attorney is an officer of the court.

It is implicit in this relationship that the attorney must advance the fulfilment of the functions for which the court is created. It is the attorney's duty towards the court – and more often than not it coincides with a duty to the client – to ascertain what precisely it is which a court has to decide and to bring that specific dispute to finality with maximum efficiency and minimum cost.

“Adequate attention to development, preparation and presentation is required to prevent the avoidable. Decisions by an attorney must be guided by those considerations and not by other considerations such as meeting monthly fees targets.”

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