

THE HIGH COURT OF SWAZILAND

NELSON SHODI ZIKALALA

Applicant

And

THE PRINCIPAL SECRETARY - MINISTRY OF AGRICULTURE

1st Respondent

THE ACCOUNTANT GENERAL 2nd

Respondent

THE ATTORNEY GENERAL

3 Respondent

Civil Case No. 694/2004

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For the Applicant For

the Respondents

S.B. MAPHALALA - J

MR. L. HOWE MISS

MKHWANAZI

RULING ON COSTS

(13/08/2004)

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Onjhe 7 November 2003, an order was granted by consent between the Applicant's legal representative and the three Respondents all represented by the Attorney General. The said order was that 1st and 2nd Respondent were directed to uplift the interdiction of his salary and re-instate him to full pay forthwith; and 1st and 2nd Respondents were directed to pay him the arrear salary due to him from 1st August 1997, to date of re-instatement, such arrear salary to include all salary increment granted between August 1997 to date of re-instatement of his salary to full pay.

The issue of costs came before the court where in a written judgment of the 13th November 2003, costs were awarded to the Applicant at a punitive scale.

On the 27th February 2004, Applicant made an application on motion for an order directing the Respondents to show cause, why they should not be arrested and detained at Sidvashini Central Prison for a period of thirty (30) days for contempt of court and further granting costs of the application on the attorney and own client scale. It was averred in this regard that the Respondents' failure to act in terms of the court order of the 7th November 2003, amounted to that court order being held in contempt by the Respondents.

The matter came before court on the contested motion of the 30th July 2004, where the issue of costs arose in the aftermath of the application of the 27th February 2004. It was submitted from the bar and it became common cause during the arguments that the Respondents have complied with the consent Order of the 7th November 2003. The Applicant contended, however that he had to launch the application of the 27th February 2004, for Respondents to comply with the said Order. The Respondents argued that the tardiness on their part is due to the so-called beaurocratic red tape of Government.

On the legal principles applicable on costs at attorney and own client scale I was referred to ***Herbstein and Van Winsen, The Civil Practice of the Supreme Court of South Africa, 4th ED*** at page 777 and the cases cited thereat including the leading case of ***Nel vs Waterberg Landbouwers Ko-operatiewe Vereeniging 1946 AD 597***.

I have considered the above authorities and the submissions made by Counsel in this matter and I take the view that costs at the ordinary scale would be appropriate in the circumstances of the present case. The explanation given for the delay in complying with the order of the 7th November 2004 is reasonable in the circumstances.

In the result, the Respondents are ordered to pay costs levied in the ordinary scale.



S.B. MAPHALALA
JUDGE