

THE HIGH COURT SWAZILAND

MANYOVU FARMERS ASSOCIATION

1<sup>st</sup> Applicant

AARON MADLOZIMAMBA

2<sup>nd</sup> Applicant

And

MAHAWUKELA SIMELANE

Respondent

Civil Case No. 903/2004

Coram: S.B. MAPHALALA-J

For the Applicants :MR. W. MKHATSHWA

For the Respondent: Advocate P. FLYNN (Instructed By Maphalala & Company)

MR. W. MKHATSHWA

Advocate P. FLYNN (Instructed By Maphalala & Company)

RULING

(On costs) (19<sup>th</sup> August 2005)

[1] The issue before the court presently is the issue of costs where Plaintiff has withdrawn his action after the Defendants have been allowed to file their plea, exception and/or any other pleadings in terms of the Rules of this court. Prior to that the Plaintiff had applied for default judgment for payment by the Defendant of sum E1, 100, 600-00 which had fallen due being in respect of services rendered by Plaintiff to the Defendant at the latter's special instance and request. In his withdrawal Plaintiff has tendered wasted costs. The issue is whether costs of Counsel in terms of Rule 68 should be allowed. Mr. Mkhathwa who appeared for the Plaintiff argued that such costs should not be allowed on the facts of the present case. Advocate Flynn who appeared for the Defendants argued otherwise. He contended that Counsel has been ready to argue the matter up to when it was withdrawn on Friday the 12<sup>th</sup> instant.

[2] It is a trite principle of law that the award of costs is a matter wholly within the discretion of the court. In casu after weighing the arguments I take the view that costs be allowed as tendered by the Plaintiff. So it is ordered.

S.B. MAPHALALA  
JUDGE