

THE HIGH COURT OF SWAZILAND

PATRICIA PHUMZILE MASEMOLA

Applicant

And

STHEMBILE DORAH SHABANGU AND OTHERS

Respondents

Civil Case No. 1684/2005

Coram: S.B. MAPHALALA – J

For the Applicant: MR. P. SHILUBANE

For 1st Respondent: MR. M. MKHWANAZI

For 2nd Respondent: NO APPEARANCES

For 3rd Respondent: MR. J. HENWOOD

For 4th Respondent: MR. C. NTIWANE

For 5th Respondent: MR. M. MABILA

RULING ON COSTS
(3rd May 2006)

[1] The only matter which presently concerns the court is whether the 5 Respondent should be awarded costs although Applicant was successful in the main application. The Applicant has taken the position that in *casu* costs should follow the event. In this regard the court was referred to the Court of Appeal case of *Tfolaphi Jane Mkhwanazi vs Enoch Lwane Maseko and two others Case No. 35/2000* (unreported). On the other hand Mr. Mabila for the 5th Respondent advanced *au contraire* argument that 5th Respondent was entitled to costs in this matter. The court was referred to the affidavits filed of record in support of the 5th Respondent's position and to legal authorities including *Jourbert Vol 3 Part 1* at page 37.

[2] The authors *Herbstein and Van Winsen, The Civil Practice of the Supreme Court of South Africa, 4 Edition* at page 703 state that the award of costs is a matter within the discretion of the court. But this is a judicial discretion and must be exercised on grounds upon which a reasonable man could have come to the conclusion arrived at in leaving the judge a discretion:

"The law contemplates that he should take into consideration the circumstances of each case, carefully weighing the various issues in the case, the conduct of the parties and any other circumstances which may have a bearing upon the question of costs and then make such an order as to costs as would be fair and just between the parties. And if he does this, and brings his unbiased judgment to bear upon the matter and does not act capriciously or upon any wrong principle. I know of no right on the part of a Court of Appeal to interfere with the honest exercise of his discretion".

[3] See also the cases of *Erasmus vs Grunon En 'n Ander 1980 (2) S.A. 793 (O) at 797B - D* and that of *Fripp vs Gibbon & Co. 1913 A.D. 354 at 363* and that of *Smit vs Maqabe 1985 (3) S.A. 974 at 977A - H*.

[4] The most important rule on costs is that the successful party is entitled to his costs unless the court for good reasons, in the exercise of its discretion, deprives him of those costs, (see *Fripp vs Gibbon & Co. 1913 A.D. 354 at 363*). It remains to be seen in *casu* whether there is good reason to depart from the norm that the successful party is entitled to his costs.

[5] On the facts of the present case it is my considered view that I cannot depart from the above-cited authority as there are no good reasons on the facts to depart from the general principles that costs should follow the event.

[6] In the result, for the afore-going reasons costs to follow the event.

S.B. MAPHALALA
JUDGE