

IN THE HIGH COURT OF SWAZILAND

HELD AT MBABANE

Civil Case No. 504/2008

SIPHO KHANYAKWENZWE TSABEDZE

Applicant

And

THE COMMISSIONER OF POLICE

First Respondent

THE ATTORNEY GENERAL

Second Respondent

Coram

S.B. MAPHALALA - J

For the Applicant

MR. T. MASEKO

For the Respondent

MR. P. DLAMINI

JUDGMENT
7th March 2008

[1] The only issue before the court is who bears the costs in this application where a consent order was recorded by the court on the 21st February 2008. The effect of the consent order was that Respondents were withdrawing the transfer of the Applicant from Bhunya Police Station to Mafutseni Police Station. The question then arose who bears the costs in the circumstances. The Applicant contends that Respondents are liable to pay wasted costs. On the other hand the Respondents contend otherwise that each party ought to pay its costs in view of the circumstances of the matter. I heard arguments regarding this aspect of the matter and I reserved my judgment on the matter to a future date. Following is my judgment on the matter.

[2] According to the legal authority of *Herbstein et al, The Civil Practice of the Supreme Court of South Africa, 4th Edition* at page 701 the purpose of an award of costs to a successful litigant is to indemnify him for the expense to which he has been put through having been unjustly compelled to initiate or defend litigation, as the case may be. It is a fundamental principle that as a general rule, the party who succeed should be awarded his costs and this rule should be departed from except on good grounds.

[3] The question that vexes the court presently is who is the successful party in the present case where the Respondents have consented to the order originally sought by the Applicant. The Applicant did not obtain success which in the case of *De Villiers vs Stadsraan Van Pretoria 1968 (2) S.A. 607 (T)* at 610 means "substantial success". The Applicant obtained a consent order. Therefore on the authority of *De Villiers (supra)* it cannot be said on the facts of the matter that Applicant has "substantial success" in the application.

[4] In the result, I order that each party pays its own costs.

S.B. MAPHALALA

JUDGE