

HIGH COURT OF SWAZILAND

Held at Mbabane

Pester Bhanoyi Sibandze (nee Simelane)

Applicant

vs

Ephraem Mbalekelwa Sibandze

1st Respondent **Dups**

Funeral Parlour 2nd

Respondent **Master of the**

High Court 3rd Respondent

Attorney General 4th

Respondent **Commissioner**

of Police 5th Respondent

Civil Case No. 103 7/2009

Coram
For Applicant
For Respondent

MAPHALALA PJ
MR. S.M. MNGOMEZULU
MR. S. DLAMINI

JUDGMENT 2nd
September 2009

[1]

The only issue for decision is that of costs after the parties have entered into an agreement regarding the burial of the deceased in this case.

[2] The Applicant contended that she has to come to court to vindicate her rights when the Respondents wanted to bury an unknown person in her homestead. That she was subjected to untold emotional assaults when people gathered in her homestead to bury a person she did not even know.

[3] The Respondent on the other has contended that each party should pay his or her costs in this matter in view of the consent by the parties.

[4] The issue of costs is clearly addressed by the learned authors *Herbstein et al, the Civil Practice of the Supreme Court of South Africa, 4th Edition at 705* that it is a fundamental principle that, as a general rule the party who succeeds should be awarded his costs, and this Rule should not be departed from except on good grounds. If there are no such grounds, then ordinarily the court on appeal will interfere.

[5] The question then arises in *casu* as to who is the successful party on the facts of the present case.

[6] It appears to me on the facts that there is no successful party in the present case in view of the consent order recorded by the Court. As much as I sympathise with the Applicant that she was subjected to untold emotional stress on the facts of the matter and for purposes of awarding costs I can not say that she is a successful party.

[7] When issues are left undecided the court possess a discretion either to direct each party to bear his own costs in regard to those issues or to award these costs to the party who succeeded on the issue that the court decided. But a claim for costs cannot stand alone, and a judgement for costs involves a decision of the merits (See *Cats vs Cats 1959(4) S.A. 375 (C)* at 379G-H. In the present case there was no decision on the merits since the parties recorded a consent order.

[1]

Principal Judge

S.B. MAPHALALA

[8] In the result, for the foregoing reasons each party to pay his or her own costs