

**IN THE HIGH COURT OF SWAZILAND**

HELD AT MBABANE

Civil Case No. 2909/2008

JACQUELINE DEVOGELAE-KONING

Applicant

AND

SMS HOLDING (PTY) LTD

Respondent

Coram

S.B. MAPHALALA - J

For the Applicant For the

MR. B. MAGAGULA MR.

Respondent

N. MANZINI

JUDGMENT 12<sup>th</sup> February 2009

[1] The only issue for decision is who bears the costs of the application.

[2] The parties have entered into a Deed of Settlement in a matter where Applicant brought an urgent application. The said application was for spoliation *ante omnia* where the Applicant who is a tenant of the Respondent alleged that she was unlawfully despoiled of the flat giving rise to their relationship.

[3] The Respondent on the other hand opposed the application stating that the application had the keys to the flat and that nothing had prevented her from going back to her flat after her trip overseas.

[4] However, all these contentions were addressed by the agreement of the parties I have mentioned above.

[5] The only question for determination by the court is who bears the costs in the circumstances.

[6] It is trite law that 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 (see *Herbstein et al, The Civil practice of the Supreme Court of South Africa, 4<sup>th</sup> Edition* at page 701 and the cases cited thereat).

[7] The nub of the matter in the present case is who is a successful party where an agreement has been made an order of court. It would appear to me that on the facts of the present case there is no successful party in the ordinary sense. Therefore I have come to the conclusion that each party ought to pay its own costs and it is so ordered.

**S.B. MAPHALALA**  
**PRINCIPAL JUDGE**