



IN THE HIGH COURT OF SWAZILAND

JUDGMENT

Civil Case No.952/2014

In the matter between:

MBABANE ESTATE AGENTS

Applicant

vs

NOBSI INVESTMENTS (PTY) LTD

1st Respondent

BONGINKOSI DLAMINI

2nd Respondent

NONKULULEKO NQUKU

3rd Respondent

Neutral citation: *Mbabane Estate Agents vs Nobsi Investments & 2 Others*
(952/2014) [2015] [SZHC 23] (27th February 2014)

Coram: **MAPHALALA PJ**

Heard: 20th February 2015

Delivered: 27th February 2015

For Applicant: Mr. N.D. Jele

For 1st Respondent: Mr. K. Magagula

- Summary: (i) Before court is an Application for costs where the Respondent stated that he said Application is irregular reaching the prayer for costs was included in the main Application proceedings.
- (ii) The Applicant contends that it is entitled to such costs citing what was ordered by **Annandale J** on the 31st October, 2014.
- (iii) In the result, I rule in favour of the Applicant in view of the entry of the 31st October, 2014.

JUDGMENT

The Application

[1] The only issue for decision by this court are costs where the Applicant filed a Notice of Motion on the 14th January 2015 in the following terms:

- “1. The Respondents are ordered to pay the costs of suit in the main application;**
- 2. The Respondents are also ordered to pay the costs of the present application;**
- 3. Further and/or alternative relief.”**

[2] The Applicant has filed a Founding Affidavit of the Applicant's attorney Mr. D.N. Jele outlining the material facts in the present case.

The opposition

[3] On the 28th February, 2015 the Respondent filed an Opposing Affidavit against the averments in the Founding Affidavit of the Applicant raising a preliminary objection and also addressing the merits of the Application.

[4] The preliminary objection is averred in paragraph 3 thereof that the present Application is irregular because the prayer for costs was included in the main Application proceedings. That the present Application is an abuse of court.

[5] The Respondent then dealt with the merits of the case where in paragraph 5.1 to 5.4 stated the following:

"5.2 However, despite the matter being referred to the Registrar for allocation in the contested motion. The Applicant has been setting the matter down in the motion court roll in a numerous occasion. Attached hereto are the notices of set down marked "N1".

5.3 As a matter of practise, after a matter has been referred to the contested motion, the litigant has to secure a date in the contested motion and then prepare Heads of Arguments so that the matter may be heard.

5.4 The numerous set down has out pocketed the Respondent as same was unnecessary. My attorneys had to attend court yet the matter had not been allocated a date for hearing. The Applicant cannot turn a blind eye for a notice of set down hence his unworthy numerous attendances.”

[6] The Applicant has not filed a Replying Affidavit in accordance with the Rules of this court.

[7] The matter then came before this court on the 20th February, 2015 where the attorneys of the parties advanced arguments for their clients. The Applicant is represented by Mr. Jele and the Respondent is represented by Mr. Magagula where I reserved my judgment on the matter.

The arguments

[8] The crux of the argument of the attorney for the Respondent is that the Applicant was precluded to approach the court as it

did as the prayer for costs was included in the main Application proceedings. That the present Application is in abuse of court process. The Respondent has consented to prayer 1 of the Notice of Motion but object to prayer 2 thereof. That this therefore is the only issue for decision by this court.

[9] In respect of the above argument of the Respondent in paragraph 7 of this judgment the attorney for the Applicant has directed the court to what was ordered by **Annandale J** on the 30th October, 2014 to the following:

“Removed from the roll. Both parties to file affidavits in support of their respective contributions. Thereafter, once ready for hearing, Registrar to enrol on contested roll as soon as possible, aiming at December, 2014.”

The court’s analysis and conclusion thereon

[10] Having considered all the arguments of the attorneys of the parties to and fro the position of the Applicant is explained by the entry of the Court of the 31st October, 2014 and therefore the objection by the Respondent that it has advanced is neither here on these facts. In fact the Respondent is trying to run away from the issue raised by the entry of the 31st

October, 2014. In all this therefore the Respondent ought to pay both costs stated in prayer 1 & 2 of the Notice of Motion. So it is ordered.

STANLEY B. MAPHALALA

PRINCIPAL JUDGE