IN THE HIGH COURT OF ESWATINI

Held at Mbabane

Case No.: 2483/2022

In the matter between

BRIRIMA INVESTMENTS (PTY) LTD **Applicant**

AND

MUAREEN NOZIPHO NKAMBULE **1st Respondent**

MXOLISI MDLULI **2nd Respondent**

THE NATIONAL COMMISSIONER OF POLICE **3rd Respondent**

THE ATTORNEY GENERAL **4th Respondent**

Neutral Citation: *Bririma Investments (PTY) LTD Vs Muareeen Nozipho and 3 others (2483/2022) [2023] SZHC 01 (24th January 2023)*

Coram: Masuku J.

Date Heard: 29th December 2022

Date Handed Down: 24th January 2023

Summary

Fly note: *An urgent application for spoliation on allegations that the Applicant was dispossessed of its movable property without its consent or lawful course.*

Discussed: *Whether or not the execution of a judgment of this Court was lawfully or not and if it amounted to the illicit ousting of the applicant's possession. Rule 45 (1) (3) and (6) discussed and the duties of the deputy sheriff under Sheriff's Act 17/1902. Further, the issue of costs at attorney and own client briefly considered.*

Held: *There was no valid attachment in execution and the deputy Sheriff's failure to comply with Rule 45 renders the attachment unlawful and therefore void. The Applicant succeeds in proving that it was illicitly ousted from possession on a balance of probabilities. The 1st and 2nd Respondents to pay the costs at attorney and client scale.*

JUDGMENT

MASUKU J

[1] The Applicant Bririma Investments (PTY) LTD brought to Court an application on a certificate of urgency on the 23rd December 2022. The importance of the dates will be apparent later on in this judgment as I canvas the reasons for the judgments.

[2] The Applicant's complaint in the urgent application is that the 1st and 2nd Respondent dispossessed it without its consent or lawful course a Toyota Truck with registration N/o. WSD 866 BM, a Toyota Hilux L.D.V with registration no. NSD463 AH, and company tools with six step ladders.

[3] The Applicant cited Maureen Nozipho Nkambule as the 1st Respondent and Mxolisi Mdluli N.O the deputy Sherriff of the district of Manzini as the 2nd Respondent. For convenience, I will refer to them from time to time as the Respondents. The National Commissioner of Police is cited as the 3rd Respondent with the aim that he will assist in the execution of any orders that this Court issues.

[4] In its founding affidavit deposed to by one Futhi Tanele Dlamini the managing director of the Applicant, the Applicant alleged that the 1st Respondent and herself had been at all material times business acquaintances. The 1st Respondent had been assisting the Applicant financially whenever the financial need arose. As time went by their business relationship became sour and ended abruptly. Although not stated but the rest of the contents of the affidavit suggests that all this was prior to the execution of a writ that prompted her to bring the proceedings before this Court.

[5] She stated further in her founding affidavit that upon the termination of the business relationship the Applicant had with the 1st Respondent started to

litigate against each other and such litigation culminated to a provisional sentence summons judgment that the 1st Respondent obtained against the Applicant in the amount of E240 000.00 (Two Hundred and Forty Thousand Emalangeni).

[6] The provisional sentence summons judgment confirmed the Applicant's indebtedness to the 1st Respondent for the E240 000.00 (Two Hundred and Forty Thousand Emalangeni). The judgment was granted by her Ladyship K. Manzini J. on the 16th December 2022.

[7] I pause to mention at this juncture that earlier on in the year on the 21st July 202, the Applicant had for reasons not apparent in the papers before me applied and obtained a spoliation Order from this Court under the hand of my brother Hon Z. Magagula J. The order directed the 1st Respondent to restore the possession of the Applicant's same Toyota Truck registration No. WSD 866 BM, company tools to *wit*, four step ladders, two fibre step ladders and two aluminum size 10.8. The facts are confirmed by the Applicant in her affidavit who has attached the order of the Court.

[8] The provisional sentence summons judgment delivered on the 16th December 2022 was used to initiate a series of events that led to the attachment and removal of the Toyota Truck NSD 463 AH, Toyota Truck L.D.V NSD AH and six step ladders. The execution of the Judgment or order is said to have been executed by the 1st and 2nd Respondents and the their attorney who

has not been cited but has filed a confirmatory affidavit disputing his personal involvement in the execution of the Court Judgment.

[9] The Applicant in the founding affidavit stated that being dissatisfied with the decision of the Court per K. Manzini J. (16th December 2022) she noted an appeal to the Supreme Court of Eswatini on the 20th December 2022. The notice of appeal appeared as annexure to the founding affidavit and clearly shows that it was instead received by the Applicant's attorney on the 21st December 2022.

[10] Alluding to the events of the execution of the writ for the provisional sentence judgment against the Applicant's movables, she confirms as much that it all occurred on the 20th December 2022. Mr Sandile Phakathi who deposed to a confirmatory affidavit to Applicant's founding affidavit also confirmed that the execution occurred in his presence whilst they were working at Mafutseni, the site where the movables were taken away from the Applicant.

[11] The founding Affidavit suggests that the bulk of information the managing director deposed to was shared to her by the Applicant's drivers Mr Sandile Phakathi. She was herself not present on site when the execution was carried out. She said she received a telephone call from the Applicant's drivers who were on site. They reported to her that there were men who were attempting to drive off with the company vehicles without their consent. The men had

introduced themselves as the Deputy Sheriff (the 1st Respondent) and attorney for the 1st Respondent respectively.

[12] She said, she then advised her drivers not to hand over the keys because the Applicant had noted an Appeal which had automatically stayed the writ of execution. Whilst her drivers were still perplexed by the drama, the attorney for the 1st Respondent forcefully grabbed the keys for the Toyota Hilux and drove the vehicle off without their consent. Not very long after the attorney had driver off in the Toyota Hilux, the 1st Respondent herself (judgment Creditor) arrived on the site in a breakdown. Without engaging anyone with any form of discussion, the company truck was towed away from site to an unknown destination. The driver of the breakdown heeded the instruction and towed the truck away. They actors also in that process took along with them essential company tool which included *inter alia* six (6) step ladders, to ground Applicant's work to a halt.

[13] I cannot ignore the fact that the deponent of the founding affidavit on behalf of the Applicant did not have first hand information on the execution. She was not on site to witness the alleged facts firsthand. I do not however classify her facts as hearsay and inadmissible because she narrated them as they were shared to her by Mr Sandile Phakathi who claimed to be one of the drivers on site and who confirmed the facts to have been within his personal knowledge.

[14] The allegations on the role of the Respondents in the execution of the writ require some scrutiny as this Court must establish if the execution was lawful. The facts therefore are to be assessed especially in the absence of the required reports, returns of service and an affidavit from the 2nd Respondent (Deputy sheriff). He did not file any of the required reports or returns as envisaged by rule 45 of the High Court Rules, when he was served with the application. I will return later on in this judgment regarding the duties of the Deputy Sheriff in executing movables property under rule 45.

[15] The Applicant's managing director makes scathing allegations on the involvement of the Respondents including the 1st Respondent's attorney about their execution style which, if true should receive censor from the Court.

[16] The Applicant's driver Mr Sandile Phakathi stated under oath that some gentlemen arrived on site whom they did not know. He however continued to state that he was with his colleagues when the gentlemen arrived. There is no affidavit from his colleague to support his assertions. He stated that the gentlemen introduced themselves to them as the Deputy Sheriff of the district of Manzini and was in the company of the 1st Respondent attorney Mr Gumedze. He alleged that Mr Gumedze took the Toyota Hilux keys and drove the car away with three step ladders on it. This was followed by the arrival of the 1st Respondent in a tow truck, she ordered the tow truck to tow the Applicant's truck away with 3 step ladders on it. All this happened when he was on the phone updating the Applicant's managing director.

[17] Phakathi's confirmatory affidavit would have been cogent if he had deposed to it as the founding affidavit and perhaps then confirmed by his colleagues as he alleged it all happened whilst he was on site. Rather than to for him to confirm facts supplied by his managing director who heard it all from him. There is nothing though in his affidavit that suggest he had met the gentlemen (before the incident) who drove to the yard and had introduced themselves as the deputy sheriff and /or that he had met the 1st Respondent's attorney before the day in question.

[18] This is perhaps the reasons that the 1st Respondent and his attorney Mr Gumedze vehemently denied their involvement. What compounds the matters is that the 2nd Respondent has not filed a return of service and/or a report or an answering affidavit to assist the Court which is in my view a dereliction if his duties.

[19] In her answering affidavit, the 1st Respondent stated under oath that the writ was served (presumably) by the 2nd Respondent through employees of the Applicant at the business premises of the Applicant at Sithobela area on the 19th December 2022. Further that the writ was executed in the morning hours of the 20th December 2022, without stating the place of execution.

[20] She stated further that a different deputy sheriff served Mr Gumemdze with the notice of appeal within the High Court premises on the 21st December 2022. She does not however state how she had the knowledge of this fact.

This makes it difficult to place her in any of the places mentioned. Was she at Applicant's site at Mafutseni on the 20th December 2022 assisting the execution of the writ as alleged by the Applicant or at the High Court with his attorney to witness the service of the notice of appeal as she claimed knowledge of the service ? Did she witness the service of the writ to Applicant's employees at Sithobela on the 19th December 2022 as she also claimed to have knowledge of the service?

[21] Whilst Mr Gumedze in his confirmatory affidavit avoided to mention that he was served with the Applicant's notice of appeal on the 21st December 2022, he did sign for it as an indication of receipt on that date. Whatever the case maybe both the 1st Respondent and her attorney denied that they formed the 2nd Respondent's party in the execution of the writ on the 20th December 2022.

[22] The date on which the writ was executed and the date of service of the notice of appeal on the Respondents are relevant in determining which process lawfully intervened on the execution of the provisional sentence judgment that was obtained in the 16th December 2022.

[23] Similarly, the role of the 1st Respondent (the judgment creditor) and her attorney as parties in the execution of the writ on the 20th December 2022 by the 2nd Respondent (if any) is relevant in determining whether rule 45 (execution of movable) was strictly observed, valid, and lawful.

[24] In the absence of the 2nd Respondent's return of service, report or answering affidavit I can only rely on the affidavits filed of record by parties which are obviously contradicting each other .The Applicant's founding affidavit by Ms Futhi Dlamini is not reliable in placing the Respondents with the attorney at the site and the manner in which it is alleged they executed the writ on 20th December 2022. I say so because she said she was not on site as she gathered the information from her driver Sandile Phakakthi who only confirmed what she attested. Instead Sandile being the one who claimed to be at the scene, does not say he had met the two gentleman who arrived whilst they were working at Mafutseni. The Respondents deny partaking and being at the Mafutseni during the execution. Mr Gumedze places himself at the High Court premise instead. The 1st Respondent does not say where she was when it was said she pulled in at the scene in a tow truck.

[25] On a preponderance of probabilities it is more likely than not that the 1st Respondent and her attorney Mr Gumedze were not on site to take part in the execution of the judgment on the 20th December 2022 as claimed by the Applicant.

[26] The conclusion I have reached in this regards should only come as a slight relief to the 1st Respondent (judgment creditor) and her attorney Mr Gumendze for not being found at the wrong end of rule. It is undesirable for a judgment creditor and his attorney to find themselves caught up in the execution area, when they should have no business at all to either assist

or be involved in execution of orders of the court. That is the duty of the sheriff or his deputy according to the sheriff's Act 17/1902.

[27] I have come across a number of Supreme Court judgments on the point made above where in the case of Hoages Handcraft (PTY) LTD and another V Vilane (52 of 2010) [2011] SZSC17 (31st May 2011), Rose Warshall Vilane (the respondent in that case) the widow of the late Antony Tinyo Vilane who had died in 2007 was harshly evicted and displaced with stunning sadness (as the Supreme Court described it) at the hands of an *ad hoc* deputy sheriff. The judgment creditor on advice of their attorney who armed with a warrant of execution joined party to execute when there was no judgment of the Court ever granted. The sad episode in that case saw an *ad hoc* deputy sheriff coming to the premises and later fetching twenty or more men and plant machinery equipment to assist on the eviction of the respondent. By the time the party had completed their displacement of the respondent, the house and other structures were totally demolished, the fence brought down. The sheet of corrugated iron and roof timbers which had not been extensively damaged were loaded into the judgment creditors truck and taken away. The Supreme Court did not only set aside the eviction process after finding that all acts done upon the strength of the invalid warrant, were wrongful, unlawful and of no force and effect whatever. The Court also directed that the circumstances of the case required thorough investigation on the involvement of the attorneys and the deputy sheriff. Judgment Creditor's involvement was not spared from criticism of the court for his active participation in the execution. See also the case of Tee Douglas Masuku V

Lobusuku Grace Masuku and five others (64/2022) [2022] SZSC 46 (16th September 2022).

[28] I now come to the role of the 2nd Respondent (Deputy Sheriff) considering that he did not file any report or a return of service and/or an answering affidavit. It is common cause that he executed a lawfull Court judgment obtained by the 1st Respondent on the 16th December 2022. The question is, was his execution of that order on the 20th December 2022 lawful?

[29] I start with the duties of a deputy sheriff in terms of the Sherriff's Act 17/1902. (the Act) the 2nd Respondent acts on powers dully authorized under the hand and real of the Sheriff for whom he shall he responsible during his continuance in such office. He executes all sentences, decrees, judgments, writs, summon, rules, orders, warrants, commands and process of the High Court. He makes returns of same, together with the manner of execution thereof to the Court through the Registrar, and the plaintiff or defendant or their respective attorney's at the costs of the party applying for same.

[30] The names of deputies shall upon appointment as deputy be transmitted by the Sheriff to the Registrar of the High Court of the name and place of abode stating the district within which he is to act for him. My research in this matter referred me to a list of Deputy Sheriffs issued by the Sheriff on the 15th November 2021 to the Registrar. It reveals all the details of the appointees as required, their cell numbers including their term of appointment. The

appointments were for the calendar year 2021/2022. Unless there was a subsequent renewal the 2nd Respondent appointments commenced from the 9th November 2020 to 9th November 2021 none of the parties in their papers have validated his terms to justify the execution he carried out on 20th December 2022. He himself for reasons unknown to the Court has not done so.

[31] Section 9 of the Act list certain property that the deputy sheriff shall not take or seize in execution of any process. The list includes *inter alia* tools or implements of trade. There is no dispute by the Respondent in *casu* on the allegation made by the Applicant that contrary to this provision, the 2nd Respondent seized company tools of trade to *wit* 6 step ladders were taken away. I have no reason to doubt or reject this allegation because it has not been disputed. The 2nd Respondent was not entitled to take away the Applicant's tools of trade in the process.

[32] The Applicant has challenged the whole execution process and said the manner in which the execution was conducted was against the rules of the Court in particular Rule 45. The Respondents denied this allegation and submitted that the property was executed pursuant to a valid writ and was also served through an employee at Sithobela area, being business premises. I have already stated in this judgment that the Act requires a mandatory filing of the return of service together with an inventory. A report on the manner of the execution must be filed by the 2nd Respondent to Court through the Registrars. Had the 2nd Respondent complied with these

requirements, it would have been easier to test and verify the 1st Respondent's assertion that the writ was served through an employee at Sithobela area. I hold that without the 2nd Respondent's return filed of record, the 1st Respondent's assertion cannot be taken seriously and must be rejected.

[33] To test the 1st Respondent's veracity on the validity of the execution by the 2nd Respondent, I was referred by the parties to rule 45 (1) (3) and (6) of the High Court Rules.

[34] I had occasion to go through the rules and their commentary by Professor Emeritus, H.J. Erasmus, superior Court practice, Juta & Co 1994. Rule 45 (1) generally deals with execution against movable property.

[35] Rule 45 (3) authorizes the Sheriff or his duly authorized deputy to proceed forthwith to the place of business where the Sheriff should present a writ to the debtor and demand satisfaction of the writ. He shall then demand that the property executable should he pointed out by the debtor. The return should show whether the debtor pointed out the goods. The Sheriff's duty is to make an inventory and a valuation of the property pointed out to establish if such is sufficient to satisfy the writ, Erasmus (*supra*). If the debtor fails to pint out the assets for attachment on request, the Sheriff is authorized by the sub rule to proceed and attach and inventory so much of the debtor's movables as he deems sufficient to satisfy the writ. The attachment process provided for in the sub rule contemplates,

a) an inventory of the goods which the Sheriff proposes to sell, and;

b) retention of possession of these goods by the Sheriff unless the judgment debtor has given a guarantee that the goods will be produced on the day of the sale.

[36] Recalling that the challenge in this case is not necessarily a call to set aside the sale for lack of compliance with the rules and, these being spoliation proceedings, I am simple called upon to decided whether or not the spoliation allegations by the Applicant can be sustained in light of the Respondents opposition.

[37] In is now settled in our jurisdiction that for the Applicant to succeed in spoliation application, all that he must prove is that:

a) He was in peaceful and undisturbed possession at the time of the alleged spoliation, and:-

b) That he was illicitly ousted from such possession on a balance of probabilities see Silberberg and Schoeman, The law of property 2nd ed at page 138 see also Reginal Administration Lubombo Region and Others V Matsenjwa and Others (15 of 2014) [206] SZSC 13 (30th June 2016) para 9 and 10 Alex and Sons Investments V Meter Mixed Concrete and two Others (07/2020) [2022] SZSC 59 (1st December 2022).

[38] With regards to the requirements in (b) a respondent may for instance prove that his act of dispossessing the applicant was in fact not unlawfull. This is what the Respondent argued in their papers and in Court . The submission being that, although the execution was lawfully authorized by the Court judgment it was not carried out in terms of rule 45.

[39] There are two points relevant for consideration under rule 45 sub rule 3 as pointed out by Erasmus (*supra*). The first is that the Sheriff is to demand the satisfaction of the writ. The sub rule demands that for a valid attachment in execution, a demand has to be made that the writ of execution be satisfied. The Second is that the Sheriff shall give to the judgment debtor written notice of attachment. Erasmus (*supra*) says failure to comply with the provision or if this rule may render the attachment invalid.

[40] The Supreme Court of Eswatini in Majazi Investments (PTY) LTD V Building Society Building Society and others (78 of 2017) [2018] SZSC 217 (30 May 2018) MCB Maphalala CJ at paragraph 12 commenting on the none – compliance of Rule 45 (8) had this to say,

> *"It is trite principle of our law that a sale in execution can only be vitiated by non - compliance where there is a material formality which goes to the root of the matter and consequently defeating the purpose of the rule and causing prejudice to the aggrieved party. [1] The enquiry entails a consideration of the basis for the formality,*

the extent of non – compliance as well as the prejudice or potential prejudice to interested parties especially the judgment debtor[2]"

[41] He continued to state in paragraph [14] that …. *"Rule 45 (8) is peremptory and provides that the deputy sheriff shall sell the attached movable property by public auction after due advertisement by him...."* (Underlining added).

[42] His Lordship Hlophe J. (as he then was) in Phangothi Investment (PTY) LTD V Swaziland Development and Savings Bank and Four Others (2392 of 2008) (2016) SZHC 96 (17 June 2016) commenting on non- compliance with Rule 45 (8) said;

> *"There can be no doubt from the language used in Rule 45 (8) (a) as captured above that it is peremptory rule as it uses the word shall . That such language is peremptory was decided in the South African cases Messenger of the Magistrate's Court , Durban Vs Pillary 1984 SA 678 (A) and lated that of Rossiter and Another Vs Rand natal Trust CO. LTD and others 1984 1 SA 387 G at 387 G – 388 (A) ... which are highly persuasive in this Court...*
>
> *where there is no compliance with a peremptory rule resulting in the sale of the property , it should follow in my view that the sale in execution in void or invalid which should result in the sale being set aside."*

[43] The principle above was further acknowledged to have been established in our jurisdiction by local cases such a Simelane and 85 others VS City Council of Mbabane and others – High Court case 775/98; Thembekile Cecilia Shabalala and 2 others V The Municipal council of Manzini and others High Court civil case No. 1978/12 as well as Meshack Dlamini vs Sandile Thwala N.O. and 8 others High Court case 321/2010.

[44] It is apparent from the reading of rule 45 (8) and the comments by their Lordships in the above cited authorities that the use of *shall* in the sub – rule prompts the interpretation that it is peremptory and no – compliance renders the sale void or in valid. There is no reason why rule 45 (1) (3) and (6) should not be interpreted as having the same peremptory language if one looks at repeat use of shall across these sub rules. I am convinced that sub – rule 45 (1) (3) and (6) likewise requires strict compliance and any failure by the deputy Sherriff to comply with the provisions of the sub rule renders the attachment and subsequent sales in execution invalid.

[45] I therefore find that without the 2nd Respondent's returns of service, it is prudent to conclude on the assertion provided for by the Applicant that the 2nd Respondent did not give the Applicant a written notice of the attachment and no demand was given that the writ be satisfied. There was therefore no valid attachment in execution and the 2nd Respondent's failure to comply with the sub rule renders the attachment unlawful and therefore void . The Applicant succeeds in proving that it was illicitly ousted from possession on a balance of probabilities.

[46] I need not go into details on the effect of the notice of appeal that was subsequently served on the 1st Respondent on the 21st December 2022 after the execution. It suffices to state that it is settled in our law that the noting of an appeal suspends or stays execution of the judgment being appealed against. See, Tee Douglas Masuku (*supra*).The appeal in any event came after the fact of the invalid execution.

[47] I now turn to the issue of costs. The Applicant has prayed for costs of the application at the scale of attorney and own client without any motivation neither in her founding affidavit nor in arguments. Similarly the Respondents have not addressed this issue. Costs should follow the course in this matter and I briefly address why it should be so and which scale is to be used.

[48] It is trite elementary principle of our law that the award of costs is a matter wholly within the discretion of the Court which must be exercised on grounds upon which a reasonable man could have come to the same conclusion of the Court. See the case of Zikalala V principal Secretary – Ministry of Agriculture and others [2003] SZHC 105 (13th November 2003).

[49] In Zikalala *(supra)* Maphalala J (as he then was) citing Herbstain and Van Winsen, The Civil Practice of the Supreme Court of South African, 4th Edition at page 703 -704 and the cases cited thereat stated that, In giving the Court a discretion;

"the law contemplates that he should take into consideration, of the circumstances of each case, the conduct of the parties and any other circumstances which may have a bearing upon the question of costs and then make such 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 if his discretion."

[50] The Court in Zikalala (*supra*) went ahead and referred to a number of South African case law on costs on an attorney and own client basis , See Nel V Waterbery Land Bonwers Ko – operative Vereening 1946 A.D 597 (interpreted in Mndzimu vs Chinhoyi Municipality and another 1998- (3) S.A 140 (ZH at 143 D-1, 144) and went on to state that:

"The grounds which may order a party to pay his opponent's attorney and own client costs include the following: That he has been guilty of dishonesty or fraud or that his motives have been vexations, reckless, malicious or frivolous or that he has misconducted himself gravely either in the transaction under inquiry or in the conduct of the case (see Hebstien (supra at page 718) . It has been held that attorney - and own client costs may be awarded on the grounds of dilatory or mendacious conduct on the part of an unsuccessful litigant."

[51] The difference between attorney and client costs and attorney and own client scale seem to elude some legal practitioners in our jurisdiction and it is from the long debate on the scale of costs which I should not burden this judgment. A crisp illustration of attorney and own client scale that resonates well to me is found in the Namibian High Court case of Development Bank of Namibia V Vero Group CC and Another (HC – MD – CIV – ACT – COM -2716 of 2021) (2022) NAHCMD 50 (11 February 2022). Masuku J citing the case of McDonald V Rudolph 1997 (4) SA 252 - B-C where Van Dijkhorst J stated as follows;

> *"The term own client is a misnomer. In the context of taxation or otherwise an attorney can only tax a bill of costs incurred by him in respect of his (own) client's matter not that of somebody else. "Attorney and own client costs" therefore has a technical meaning – pertaining the basis of taxation - when used in the context of litigation. These costs are allowed on taxation of any attorney's bill to his own client. They include all costs except when unnecessarily incurred or of an unreasonable amount".*

[52] In *casu* the Applicant stated in her founding affidavit that the parties had been business acquaintances for some time, but for some reasons did not articulated how the relationship went sour and ended abruptly. The termination of the relationship sparked an uncontrollable series of litigation (Which the Respondent notes in their answer) that have in my view bordered if not crossed over to vexatious and reckless litigation by the parties. This has not spared us the unnecessary work load that the parties have passed through to

the Courts, stealing the scarce resources of the Courts to deal with much more genuine and deserving cases in the backlog of cases . It is disturbing that a few months prior (21st July 2022) the High Court dealt with the same parties, the same Applicant on a spoliation application for the same Toyota Truck WSD 866BM and 4 ladders. The Court ordered the same 1st Respondent to restore possession of the movables to the Applicant.

[53] The Applicant has returned once more within that short space of time to Court for spoliation orders against the same 1st Respondent to stop an execution which ought not have taken place in light the findings of this judgment and the appeal that had been filed a day after the execution.

[54] As a sign of censor and in the circumstances of the case, I order costs against the 1st Respondent in favour of the Applicant at an attorney and client scale. I take cognance of the fact that the parties did not address the Court on the costs issue for this Court to grant costs at attorney and own client scale which is much higher.

[55] In the circumstance and for the reasons set out above it is ordered that;

1) The 1st and 2nd Respondents forthwith restore to the possession of the Applicant;

1.1A Toyota Truck described as: -

Make	:	Toyota Truck
Chasis No.	:	XZU4100001071
Engine No.	:	JOSCD 10380
Registration No.	:	WSD 866 BM

1.2A Toyota Hilux L.D.V described as:-

Make	:	Toyota Hilux L.D.V
Chassis No.	:	AHTCS12 G907530050
Engine No.	:	2KD7761955
Registration No.	:	NSD 463 AH

2) The company tools to writ (6) six step ladders.

3) The 1st Respondent pays the costs of this Application infavour of the Applicant at the scale of attorney and client.

S.M. MASUKU
JUDGE - OF THE HIGH COURT

For 1st Applicant: **Mr Celumusa Bhembe of Bhembe and Nyoni Attorneys**

For the 1st and 2nd Respondents: **Mr S. Gumedze of V.Z. Dlamini Attorneys**