IN THE SUPREME COURT OF SWAZILAND

HELD AT MBABANE   **APPEAL NO.69/2009**

In the matter between

PETERS TRANSPORT (PTY) LTD APPELLANT

AND 70 OTHERS

AND

MUNICIPAL COUNCIL OF MANZINI AND 6 OTHERS   **1ST RESPONDENT**

CORAM: M.M.RAMODIBEDI CJ,

       S.A. MOORE et

     I.G. FARLAM JJA

HEARD: 20 MAY 2010

DELIVERED:

     COURT ORDER AGAINST PARTIES WITH NO LOCUS STANDI

     I.G. FARLAM JA

[1] *"[D] e jure the insolvent estate was not before the court and did not litigate and cannot be ordered to pay costs. The right persons to be mulcted in costs for the abortive application are the trustees who purported to bring it on behalf of the insolvent estate without right or authority to do so. This seems to me logically inescapable. It was also the approach of the court in* **Ashley v SA Prudential Ltd 1929 PD 283".**

In present case proceedings instituted by Jacob Mashaba. He is proper person to be ordered to pay the costs: **Blon** case at 14 E – F.

[2] **Attorney and Own Blient** not generically different from award on attorney and client scale Law Society of the Cape of Good Hope v Windvogel 1996 (1) SA 1171 (C) - left open by SCA in Through bred Breeders Association of SA v Price Waterhouse 2001 (4) SA 551 (SCA)

Achieves no more that order that costs be paid between attorney and client **Aircraft Completions Centre (Pty) Ltd v Rossouw 2004 (10 SA 123 (W)**

[3] <u>Learn to appeal against cost order</u>

Not lightly granted – normally justified only if court **a quo** *"exercised its discretion capriciously or upon a wrong principle or if it has not brought its unbiased judgment to bear on the question or has not acted for substantial reasons"* **OKH Farms (Pty) Ltd v Littler No Col A Civil Case 29 (2006 Respondent's bundle, p 23 or 47 – 8.**

[4] Attorney – Blient costs: factors: *Littler's* case, R'S bundle 38 – 39.

[5] Application being brought on urgent basis where not warranted punitive costs –

System B Payne v Fraay & ors 1948 (1) SA 1272 (W)**(**R'S bundle at 77) **Maseko on v Mbatha**, Col A, Civ Appeal 7/2005 (R'S bundle pp 109 – 112, espet 112