



**IN THE HIGH COURT OF SWAZILAND**

**JUDGMENT**

Civil Case No.337/2013

In the matter between:

**SIPHO CYPRIAN NXUMALO & 4 OTHERS**

**Applicant**

**vs**

**MASTER OF THE HIGH COURT & 6 OTHERS**

**Respondents**

**Neutral citation:** *Sipho Cyprian Nxumalo & 4 Others vs Master of the High Court & 6 Others (337/2013) [2014] SZHC 32 (7<sup>th</sup> March 2013)*

**Coram:** **MAPHALALA PJ**

**Heard:** 21<sup>st</sup> June 2013

**Delivered:** 7<sup>th</sup> March 2014

**For Applicant:** Mr. S.C. Dlamini

**For Respondent:** Mr. V. Manana

Summary: (i) *Ruling on costs where the Applicant has sought that the Master of the High Court also pays costs as the other Respondents in the Application.*

- (ii) *The 1<sup>st</sup> Respondent contends that no order for costs against her should be granted due to the fact that 1<sup>st</sup> Respondent exercised quasi judicial functions conferred to her by the Administration of Estate Act.*
- (iii) *This Court agrees in toto with the submissions of the 1<sup>st</sup> Respondent and decline to issue costs as sought by the Applicant. That the 1<sup>st</sup> Respondent was exercising quasi judicial duties under the Act.*

**Decided cases referred to in the judgment:**

1. ***Elias Kheli Dlamini and Another vs The Master of the High Court and 2 Others, High Court Case No.2362/11.***
2. ***The Commissioner of Correctional Services vs Tsetselelo Hlatjwako, Supreme Court Case No.62/2009.***
3. ***The Commissioner of Police and Another vs Aaron Mkhondvo Maseko, Supreme Court Case No.3/2011.***
4. ***Maclean vs Haasbroek NO and Others 1957(1) SA 462.***

**RULING**  
**(on costs)**

[1] Serving before court is an Application where Applicant seeks that the 1<sup>st</sup> Respondent be joined to pay costs of this Application. The said Application is by Notice of Setdown with the Registrar's stamp of the 12<sup>th</sup> September, 2013.

### **A brief history of the matter**

[2] This matter appeared before this court where Respondents were represented by Miss da Silva of. The Application was in the long form where Applicant sought the removal of 2<sup>nd</sup> Respondent from the office of Executrix in the estate of late Esther Themba Nxumalo and other prayers thereof. The 2<sup>nd</sup> Respondent filed an Opposing Affidavit and was to file a supplementary affidavit thereafter. On the date of hearing of arguments of the attorneys Mr. S.C. Dlamini appeared for the Applicant and there was no appearance for the Respondent. The court allowed Mr. S.C. Dlamini to proceed to argue the matter in the absence of the other side in view of the fact that the matter had been postponed on a number of occasions to allow the Respondents to put their house in order.

### **The order as to costs**

[3] The court then granted an order in terms of prayer 1, 2, and 3 of the Notice of Motion on 12<sup>th</sup> July, 2013.

[4] The judgment of the court in respect of the above orders stated at paragraph [12] as follows:

*“In the result, for the foregoing reasons an Application is granted in terms of prayers a), b) and c) together with costs. A further order is granted that Stanbic divulge the balances of the account of the estate at the date of death. Furthermore, the wasted costs of 21<sup>st</sup> June, 2013 to be borne by the 2<sup>nd</sup> Respondent.”*

- [5] The issue presently therefore is that the parties seek clarity of the court as to costs. It is contended for the Applicant that Respondents ought to pay costs jointly and severally. However, it is contended for the 1<sup>st</sup> Respondent that she cannot be ordered to pay costs since she exercised *quasi* judicial powers conferred to her by the Administration of Estate Act.
- [6] Having considered all the arguments of the parties on this issue I am inclined to agree with the arguments advanced for the 1<sup>st</sup> Respondent. I say so, firstly because the Applicant did not seek an order for costs against the 1<sup>st</sup> Respondent in its initial Application. Secondly, I agree with the 1<sup>st</sup> Respondent’s contentions that the Master of High Court exercised *quasi* judicial functions in an official capacity thus no costs order can be sought against her. Thirdly, I also agree with the 1<sup>st</sup> Respondent’s arguments that there has been no *mala fide* on the part of

the Master in the court's finding to require the 1<sup>st</sup> Respondent to pay costs.

[7] In coming to the above conclusion I sought refuge on a number of decided cases including the High Court case of *Elias Kheli Dlamini and Another vs The Master of the High Court & 2 Others*, High Court Case No.2362/11. The case of *The Commissioner of Correctional Services vs Ntsetselelo Hlatjwako*, Supreme Court Case No.62/209; *The Commissioner of Police and Another vs Aaron Mkhondvo Maseko*, Supreme Court Case NO 3/2011 and that of *Maclean vs Haasbroek NO & Others 1957(1) SA 464*. I find that these cases support the position I have taken in this regard.

[8] In the result, for the foregoing reasons I decline to issue costs against the 1<sup>st</sup> Respondent that costs be ordered "jointly and severally" in respect of the other Respondents in the Application. So it is ordered.

**STANLEY B. MAPHALALA**  
**PRINCIPAL JUDGE**