



**IN THE SUPREME COURT OF SWAZILAND
JUDGMENT**

Civil Appeal Case No. 30/2014

In the matter between:

THE NHLANGANO TOWN COUNCIL

Appellant

And

GILBERT MAJALIMANE ZULU

1st Respondent

THE MESSENGER OF COURT SHISELWENI

2nd Respondent

Neutral citation: *The Nhlangano Town Council v Gilbert Majalimane Zulu & Another (30/2014) [2014] SZSC 72 (3rd December 2014)*

Coram: **A.M. EBRAHIM J.A, DR. S. TWUM JA and P. LEVINSOHN JA.**

Heard: 12 November 2014

Delivered: 3rd December 2014

JUDGMENT

DR S. TWUM J.A.

- [1] Upon this appeal against Order for costs only coming on for hearing, Counsel for the Appellant applied for leave to withdraw the appeal. Counsel for the Respondent indicated that he had no objection to the withdrawal but asked that punitive costs be awarded against the Appellant.
- [2] It is trite that an award of punitive costs is a matter that lies within the discretion of the Court. This is however not an arbitrary discretion but one that must be exercised judicially upon a consideration of all the relevant factors. See **Jomas Construction (Pty) Ltd v Kukhanya (Pty) Ltd, Civil Appeal No. 48/2011, Silence Gamedze and Others v Thabiso Fakudze; in re Thabiso Fakudze v Silence Gamedze, Civil Appeal Case No. 14/2012.**
- [3] In this matter the appellant's reprehensive conduct as well as its unmeritorious appeal indisputably calls for a punitive costs order. In this regard it is necessary to record the following apposite findings of the court a quo in paragraphs [25] and [29] of its judgment, namely:-

“[25] I have already found that it was the first respondent that set the process of recovering the rates owing in motion. In so doing, the first respondent did not even keep a record as to which of its attorneys were instructed to carry out the task. To compound matters, it failed completely to follow the provisions of the Rating Act. In so doing, it acted Cowboyishly or recklessly, with utter disregard to the law and the rights of the applicant.

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[29] For the foregoing reasons, I ruled that the conduct of the first respondent herein, first in setting the rates recovery exercise in motion, without regard to the applicable law, and its actions or lack thereof thereafter is deserving of this Court’s censure herein. Consequently, in its discretion, this Court marks its displeasure with such conduct with an order for costs at attorney and client scale. The applicant has been certainly and needlessly put out of pocket by such actions or omissions by both the first and second respondent. I emphasise though that each of these respondents is being penalized for its own acts or omissions. There is no vicarious liability or even shared liability herein.”

[4] In the result the following order is made:-

(1) The application for the appeal to be withdrawn is hereby granted.

(2) Costs to the respondent at attorney and own client scale.

Dated at Mbabane on the 3rd December 2014.

DR. S. TWUM
JUSTICE OF APPEAL

I agree.

A.M. EBRAHIM
JUSTICE OF APPEAL

I agree.

P. LEVINSOHN
JUSTICE OF APPEAL

For Appellants : **Mr. B. Ngcamphalala**

For 1st Respondent : **Mr. T. Ndlovu**