IN THE SUPREME COURT OF ESWATINI

HELD AT MBABANE **Case No.: 18/2023**

In the matter between:

GOLIDE KASIKHOVA (PTY) LTD **Appellant**

And

ASIKHUTULISANE PROPERTIES (PTY) LTD **Respondent**

Neutral Citation: Golide Kasikhova (pty) Ltd vs Asikhutulisane Properties (Pty) Ltd (18/2023) [2025] SZSC 137 (18/03/2025)

Coram: **S.P. DLAMINI JA;**
S.B. MAPHALALA JA;
L.M. SIMELANE AJA.

Date Heard: 28 September, 2023.

Date Delivered: 18 March, 2025.

SUMMARY : *Land Lord and Tennant – Breach of the material terms of a lease agreement – An application for cancellation of the lease was made – The Court a quo granted the application applying the principle of Pacta Sunt Servanda – Grounds of appeal – The Principle of Pacta Sunt Servanda was wrongly applied – Court a quo did not consider an oral agreement entered into between the parties – Court a quo lacked jurisdiction to hear the matter – The issue of lack of jurisdiction and costs raised for the first time in the heads of argument – That there is no merit on the grounds of appeal.*

Held: *The principle of pacta sunt servanda was correctly applied – Order for payment of costs at attorney/client scale and replaced with an order for cash at an ordinary scale and payment of collection commission reversed – Appeal dismissed with costs at ordinary scale.*

JUDGMENT

L.M. SIMELANE, JA:

INTRODUCTION

[1] This is an appeal against the judgment of Court *a quo* delivered on 3rd April 2023. The Court *a quo* in its judgment granted an order for cancellation of the lease agreement and ejectment of the Appellant from the premises.

PARTIES

[2] The Appellant before this Court was the Respondent in the Court *a quo*. The Respondent before this Court was the Applicant in the Court *a quo*.

BRIEF BACKGROUND

[3] On the 30th March 2022 the parties entered into a written agreement in terms of which the Respondent let to the Applicant premises, a certain shop No. 1, situated at Bhunya in the Manzini District. The lease agreement between the parties was for a period of three (3) years commencing on the 1st April 2022 up to the 31st March 2025. The monthly rental was fixed at E3 500.00 for the first year. For the second year the rental was fixed at E3 300.00. The rental for the third year was fixed at E3 630.00. The rental for the whole duration of the lease was inclusive of 15 % vat. The rentals were payable in advance on or before the 7th day of every month. The parties agreed that the rentals were to be deposited in the Respondent's bank account. The lease agreement, *inter*

alia, provided that in the event the lessee commits a breach of its terms, the lessor was entitled to apply for its cancellation and the ejectment of the lessee from the premises.

[4] Pursuant to the lease agreement that was entered into between the parties, the Appellant took occupation of the premises and operated a bar. During its continual occupation of the premises the Appellant defaulted in paying its monthly rentals. The Appellant did not pay rentals from the period between April 2022 until January 2023. The arrears rentals that had accumulated to E46 223.76 (Forty Six Thousand Two Hundred and Twenty Three Emalangeni Seventy Six Cents) inclusive of VAT. The Appellant was given notice to remedy the breach within a stipulated period but it failed to remedy same.

[5] As a result of the Appellant's failure to remedy the breach of the lease agreement the Respondent instituted proceeding in the Court *a quo* for perfection of the Landlord's Hypothec. In this regard, an *ex-parte* application was made by the Respondent before the Court *a quo* on the 2nd February 2023. The Court *a quo* issued an interim order interdicting the Appellant from removing the movable items from the premises. The interim order was returnable on the 10th February 2023.

[6] After being served with the Court order and the Notice of Motion, the Appellant filed an answering affidavit wherein it raised a host of points *in*

lamine. The Respondent also filed a replying affidavit. The Application was then argued on the 15th February 2023 and judgment was reserved. On the 3rd April 2023 the Court *a quo* delivered impugned judgment in the matter in terms of which the Rule nisi issued by the Court on the 2nd February 2023 was confirmed. The Appellant was ordered to pay costs of attorney own client scale plus collection commission.

[7] The Appellant being dissatisfied with the judgment and the orders that were issued by the Court *a quo*, noted an appeal to this Court on the 5th April 2023. The Appellant noted an appeal on the following ground:-

> *"The Court a quo erred in law by applying the principle of pacta sunt servanda and insisting on the res epsa loquitor regard had to the fact that the premises are owned by Usuthu Forest Products Company Limited, a company which leased same to Asikhutulisane Savings and credit Co-operative and not the Respondent considering the oral and written agreements entered into between Usuthu Forest Product Company Limited and Asikhutulisane Savings and Credit Co-operative before March 2022 and on 12th December 2022 respectively."*[1]

APPELLANT ARGUMENTS

[8] When the appeal was heard the counsel for the Appellant Mr Ndlangamandla made the following arguments:-

[1] Ground of appeal page 87 of the record.

8.1 That the Court *a quo* did not have jurisdiction to hear the application for cancellation of the lease agreement and the ejectment because the parties had consented to the jurisdiction of the Magistrates Court to hear and determine all disputes arising from the lease agreement. In support of his argument he relied on clause 13 of the lease agreement which provided as follows-

*"**Clause 13: Legal Proceedings***

The lessee agrees to the jurisdiction of the Magistrates Court in connection with any action or suit arising from this lease or the cancellation thereof and the lessee selects the premises as address to which notice maybe sent and for service and execution of all legal process in any action which may arise directly or indirectly from this lease or the cancel on thereof."[2]

8.1.1 That on the basis of clause 13 the Court a quo had no jurisdiction to hear the matter. It is the Magistrate's Court that had jurisdiction to hear and determine the application for cancellation of the lease agreement and the ejectment. When he was asked as to what happens in instances where the amount claimed is above the jurisdiction of the Magistrates Court, as it was in the matter *in casu*, he argued that it did not matter even if the amount is above its jurisdiction. What is important is that the parties consented to the jurisdiction of the Magistrate's Court."

[2] Clause 13 of the lease agreement at page 30 of the record.

8.2 That on the issue of raising the point of lack of jurisdiction of the Court a quo for the first time on appeal, Mr Ndlangamandla argued that a point of law can be raised for the first time on appeal if it is not going to result in unfairness to the other party and where it does not raise new factual issues and does not cause prejudice. In support of his argument he cited the case of **Moipane Moroka vs Premier of the Free State Commission of Traditional and 5 Others**[3].

8.3 That the Court *a quo* erred in law by applying the principle of *pacta sunt servanda* in this matter. He contended that the Court *a quo* confined itself on the written lease agreement when the parties had entered into an oral agreement prior to signing the lease agreement. In terms of the oral agreement the parties agreed that the lessee was not expected to pay the rentals pending completion of the renovations. The Appellant's case was that, since it had incurred expenses that were above the arrear rentals in renovations, it was therefore not expected to pay the rentals. It was argued that the Court *a quo* erred by not taking into consideration the oral agreement that was entered into between the parties regarding renovations payment of the costs thereof. In support of his argument, Mr Ndlangamandla referred to the case of –**Barkhuizen vs Napier**[4] where Ngcobo J observed that the application of the principle of *pacta sunt servanda* is subject

[3] Supreme Court of Appeal of South Africa – Case No. 295/2020
[4] 2007 (SA) (5) A 323 CC

to Constitutional control. He prayed that the matter be referred back to the Court *a quo* to consider the oral agreement that was entered into between the parties.

8.4 That the latin *maxim-res ipsa loquitor* which translates to – "the thing speaks for itself" which was applied by the Court *a quo* when referring to clause 20 of the lease agreement, was wrongly applied. His contention was that the latin maxim could not be used to interpret a clause of a lease agreement. He argued that the *Res ipsa loquitor* was commonly used in claims for damages arising from negligence.

8.5 That the order granted by the Court *a quo* for directing the Appellant to pay costs both at punitive scale and collection commission was granted erroneously. He argued that there are judgments which say that a successful party cannot be granted both. He did not refer us to the specific judgments that dealt with this issue. When he was asked as to whether counsel were given the opportunity to address the Court specifically on the issue of costs at punitive scale, his answer was in the negative.

Respondent's Arguments

[9] Counsel for the Respondent, Mr Mntungwa made the following arguments on behalf of the Respondent:-

9.1 That the legal principle of *pacta sunt servanda* was correctly applied by the Court *a quo* in this matter. Parties in contract are expected to honour their contractual obligations. The parties in this matter entered into a lease agreement. The lease agreement was reduced into writing and signed by both parties. In support of his argument Mr. Mntungwa relied on the following cases; **Berkhuizen vs Napier (*supra*) Tin Can Holdings (Pty) Ltd vs PSI Eswatini[5] Busaf (Pty) Ltd vs Vusi Emmanuel Khumalo trading as Zimeleni Transport[6].** He submitted that in the cases he referred us to, the Courts have laid down the legal principle that once the parties have reduced their agreement into writing, it supersedes all other agreements they have entered into. The other scattered parts of the agreement which are not embodied in the written agreement becomes immaterial.

9.2 That the Appellant's contention that the Court *a quo* failed to consider the oral agreement that was entered into between the parties in regard to renovations and payment of its expenses, was incorrect. He submitted that the Court *a quo* did deal with the issue of oral agreement. He referred us to page 84 to 85 of the record, an extract of the impugned judgment. The Court *a quo* held that the oral agreement was of no force and effect because it was not reduced into writing in terms of clause 20 of the lease agreement. Clause 20 of the lease agreement provides that no

[5] (2101/2022) [2023] SZHC 11 (03/02/2023)
[6] High Court Case No. 2839/2008

agreement at variance with the lease agreement shall be binding on the parties unless reduced into writing and signed by the parties.

9.3 That the issue of lack of jurisdiction of the Court *a quo* to hear and determine the matter because the parties consented to the Magistrate's Court jurisdiction, should not be considered because it was raised for the first time in the Appellant's heads of argument. The Court *a quo* never dealt with the issue of lack of jurisdiction because the Appellant never raised it.

9.4 That the Appellant did not appeal against the order for costs at punitive scale. The issue of costs was raised for the first time on appeal. He submitted that in the event this Court was going to entertain the issue of costs the Respondent was prepared to accept an order for costs in the ordinary scale.

9.5 That there were no merits on the appeal. He prayed that the appeal be dismissed with costs.

Analysis of the Law

[10] It is not in dispute that the parties entered into a written lease agreement on the 30th March 2022. The lease agreement they entered into was for a period

of three years commencing on the 1st April 2022 to 31st March 2025. It is also not in dispute that the Appellant who is the lessee defaulted in making payments for the rentals. The Appellant did not pay rentals during the period between April 2022 to January 2023. During that period, the Appellant accumulated arrear rentals in the sum of E44 223. 76 (**Forty Four Thousand Two Hundred and Twenty Three Emalangeni Seventy Six Cents).** The reason given by the Appellant for the default in paying rentals is that it carried out renovations on the rented premises. The expenses it incurred in renovating the premises off-setted the arrear rentals. The Appellant's contention is that there was an oral agreement that was entered into with the Respondent to carry out renovations. Payment of rentals was suspended pending completion of the renovations. After completion of the renovations its costs were going to set-off arrear rentals.

[11] It is common cause that the Appellant carried out the renovations. However, the Respondent disputes that it was agreed that payment of rentals was suspended pending completion of the renovations. The Respondent also disputes the amount that was spent by the Appellant on the renovations of the premises. It further disputes that it was agreed that the costs of renovations were going to off-set the arrear rentals.

[12] The Court *a quo* granted the application for cancellation of the lease agreement and ejectment of the Appellant. The cancellation of the lease agreement and the ejectment of the Appellant was granted applying the legal principle of *pacta sunt servanda* which denotes that all contractual agreements

must be honoured. The Court *a quo* applied the legal principle of the *pacta sunt servanda* basing it on the provisions of the lease agreement. The Court *a quo* also relied on the fact that it was not in dispute that the Appellant had defaulted in paying rentals. The arrear rentals had accumulated to E44 226.76. The main legal issue for determination by this Court is whether or not the Court *a quo* erred in applying the principle of *pacta sunt servanda* to grant the application for cancellation of the lease agreement and ejectment of the Appellant.

[13] It is common cause that the Appellant had committed a breach of the lease agreement. The Appellant had not paid rentals for the period between April 2022 and January 2023. The Appellant had also failed to remedy its breach not withstanding that it was given notice to remedy same. In terms of clause 14 of the lease agreement, the Respondent was entitled to apply for cancellation of the lease and ejectment of the Appellant from the premises.

> *"Clause 14 Breach by the Lessee*
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> *Should the Lessee fail to make any payment due in terms of this lease, or should the lessee commit a breach of any of the other terms thereof, the Lessor shall be entitled to give the Lessee not less than seven days written notice to make such payment or remedy such breach, and in the event that the Lessee fails to comply with such notice the Lessor shall be entitled, at his option , either to cancel this lease and to retake possession of the Premises and to sue the Lessee for any arrear rent and/or any other amount due by the Lessee and / or any damages*

sustained by the Lessor, including all legal fees, Deputy Sheriff's fees and collection charges" [7].

In the foregoing when the Respondent instituted the application in the Court *a quo* it invoked clause 14 of the lease agreement it entered into with the Appellant.

[14] The Appellant's main ground for opposing the application in the Court *a quo* was that it had carried out renovations on the premises. The costs of renovation were far above the arrear rentals. It argued that there was an oral agreement that was entered into between the parties that the costs of the renovations were going to off-set the arrear rentals. The Appellant's contention was that there was an agreement that payment of the rentals was going to be suspended pending completion of the renovations. The Appellant's ground for opposition was rejected by the Court *a quo*.

[15] I have observed that the lease agreement has a provision that deals with alterations. Clause 7 to 7.3 of the lease agreement deals with alterations. In my view the Appellant carried out structural alterations. According to the record (page 38) it built toilets and erected fence made of timber without approval from the Respondent. Clause 7 to 7.3 of the lease agreement provides as follows:-

"Clause 7 Alterations

[7] Clause 14 of the lease agreement page 30 of the record.

7.1 The Lessee shall not make any structural alteration to the Premises without the prior written approval of the Lessor, which consent shall not be unreasonably withheld.

7.2 If any alterations are so made, then the Lessee shall be entitled to remove any materials so used at the expiration of the lease or renewal thereof, if applicable, and to remove same without doing any substantial damage to Premises. The Lessee shall reinstate the condition the Premises to its former condition as found at the commencement date of the agreement, at his own expense.

7.3 The Lessor shall not be required to pay any compensation whatsoever to the Lessee in respect of any alterations so made whether or not the same are removed by the Lessee, unless the Lessor, when granting consent to such alterations, agreed to do so."[8]

15.1 According to clause 7.1 of the lease agreement, the lessee shall not make any structural alteration to the premises without the prior written consent of the lessor. In the record of proceedings in the Court *a quo* there is no written consent that was given to the Appellant to carry out renovations on the leased premises. On the record there is correspondence from Respondent to Bhunya Villages – Usuthu Forest stating that it had made a request to the Appellant to be furnished with

[8] Clause 7 of the lease agreement page 29 of the record.

renovation plans. There is nothing in the Court record which shows that the Appellant furnished the Respondent with renovations plans. In the absence of the renovations plans and the written consent to carry out the renovations, I have come to the conclusion that the renovations were not authorized by the Respondent. The fact that the Respondent acknowledges that the renovations were done does not mean that they were authorized.

[16] The other legal issues for determination are-

16.1 Whether or not there was an oral agreement that was entered into between the Appellant and Respondent to suspend the payment of rentals pending completion of the renovations.

16.2 Also the issue of whether or not the parties agreed that the costs of renovations were going to off-set the arrear rentals. The Respondent seriously disputed that it entered into such an agreement with the Appellant.

[17] In light of the findings I made that Appellant was not given a written consent to carry out the renovations and that it did not furnish the Respondent with renovations plan, it is highly unlikely that the parties reached an oral agreement to suspend payment of rentals. It is also highly unlikely that the parties agreed that the costs of renovations were to off-set the arrear rentals. I am inclined to believe the Respondent that there was no such an oral agreement that was entered into between the parties.

[18] Even if that oral agreement had been entered into between the parties, it was of no force or effect because it was not reduced into writing and signed by both parties. Clause 20 of the lease agreement provided that no agreement

that is at variance with the terms of lease agreement shall be binding on the parties unless reduced into writing.

> *"**Clause 20 Entire Agreement***
>
> *No agreement at variance with the terms of this lease shall be binding on the parties unless it be reduced to writing and signed by the parties, and no indulgence or extension granted to the Lessee by the Lessor shall in any way prejudice the Lessor's right in terms of or create new rights. The Lessor is not bound to or liable for any representations other than those contained in this lease."*[9]

[19] In clause 15 (2) the lease agreement states that the Lessee may not under any circumstances, withhold payment of the rentals by reason of an alleged default by the Lessor.

> *"Clause 15 (2) – The lessee may not under any circumstances whatsoever, withhold payment of the rentals or any party thereof by reason of an alleged default by the lessor or for any other reason whatsoever."*[10]

In the circumstances, the Appellant was not entitled to withhold payment of rentals for the reason that it was carrying out renovations.

[20] In my view the Court *a quo* correctly applied the legal principle of *pacta sunt servanda* in this matter. The parties entered into a written lease agreement. The terms of the lease agreement I have referred herein governs all the issues that gave rise to the litigation between the parties. The legal authorities cited by both parties have stated succinctly clear that where an agreement between the parties has been reduced into writing, that document becomes the conclusive terms of that agreement. All other previous statements pertaining to that subject matter have no legal consequences if they are not included in

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[9] Clause 20 of the lease agreement at page 32 of the record.
[10] Clause 15 (2) of the lease agreement page 31 of the record.

that document. In the case **of Busaf (Pty) Limited vs Vusi Emmanuel Khumalo trading as Zimeleni Transport High Court Case No 2839/2008** Masuku J[11] stated the position of the law as follows:-

> *"The import of the foregoing on the case is that because the parties to the agreement, namely the Plaintiff and the Defendant decided to embody all the terms of the agreement in a single memorial, the Defendant may not seek to lead evidence tending to prove anything contrary to the express terms of the agreement. To the extent that he seeks to do so, he is totally out of order. The net result is that the purported defences raised by the Defendant serve to undermine the memorial of their agreement, which it is common cause, was reduced to writing and signed by both parties, signifying that they bound themselves to the terms thereof."*

[21] In view of the foregoing, the Court *a quo* correctly granted the application for cancellation of the lease agreement and the ejectment of the Appellant from the premises on the basis of the terms of the written lease agreement that was signed by the parties. It is common cause that the Appellant was in breach of the material terms of the lease agreement.

JURISDICTION

[22] Mr Ndlangamandla argued on behalf of the Appellant that the Court *a quo* did not have jurisdiction to hear this matter because in terms of clause 13 of the lease agreement, the parties consented to the jurisdiction of the Magistrate Court. He argued that a party may raise a new point of law on appeal for the first time if it does not result in unfairness to the other party, and it does not cause prejudice. In support of his argument he relied on the case of **Moipane Moroko vs Premier of the Free State Commission of Traditioner and 5 Others.** [12]

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[11] *Supra*
[12] *Supra*

[23] Mr Mtungwa for the Respondent argued that the point of law on jurisdiction should not be considered by this Court. He argued that the issue of jurisdiction was not dealt with in the Court *a quo*. It was also not among the grounds of appeal. It was raised for the first time on appeal.

[24] I am inclined to reject the point of law on jurisdiction. The issue of jurisdiction was not in the Appellant's pleadings in the Court *a quo*. It was not argued in the Court *a quo*. It was also not among the grounds of appeal. If this Court was to entertain the point on jurisdiction that could raise a new factual issue and cause prejudice to the Respondent. See the case of **NUR & SAM (pty) Ltd trading as Big Tree Filling Station and Another vs Galp Swaziland.**[13]

[25] For the sake of completeness, even if the Appellant had raised the issue of jurisdiction appropriately in my view, it has no merit. Counsel for the Appellant relied on clause 13 of the lease agreement to support his argument that the Court *a quo* had no jurisdiction to hear this matter. Clause 13 of the lease agreement provides as follows:-

> *"13: Legal Proceedings*
>
> *The lessee agrees to the jurisdiction of the Magistrates Court in connection with any action or suit arising from this lease or the cancellation thereof...."*[14]

[13] Civil Appeal Case No. 32/2015
[14] Clause 13 of the lease agreement page 30 of the record.

[26] It is trite law that a statute or clause of a contract that seeks to oust the jurisdiction of the Court should state that in clear and concise language. The provision should not be capable of more than one meaning or interpretation. If the provision is capable of being given more than one interpretation, the Courts interpret it against the ouster clause. Clause 13 of the lease agreement provides that the lessee agrees to the jurisdiction of the Magistrates Court. In my view this clause does not close a door for a party who wants to take a matter to the High Court. There is nothing in the lease agreement which states that a party cannot take a dispute arising out of the lease agreement to the High Court.

26.1 In any event, parties cannot by agreement oust the jurisdiction of the High Court. The High Court has unlimited jurisdiction in Civil and Criminal matters. The High Court has jurisdiction to hear and determine matters that fall within the jurisdiction of Magistrate's Courts because it has concurrent jurisdiction with Magistrate's Courts. See to the judgment of the Supreme Court of Appeal of South Africa in the matters of **Standard Bank of South Africa Ltd and Others vs Thobejana and Others and Standard Bank of South Africa Ltd vs Gqirana N.O. and Another.**[15]

[27] In the circumstances, the Respondent was entitled to institute the application in the Court *a quo*. The amount claimed by the Respondent in respect of arrear rentals was E46 223.76 which, is above the jurisdiction of the Magistrate's Courts. The High Court has unlimited jurisdiction both in Civil and Criminal matters. Section 151 (1) of the Constitution of the Kingdom of Eswatini provides as follows:-

> *"The High Court has unlimited jurisdiction in civil and criminal matters as the High Court possess at the date of commencement of this constitution".* [16]

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[15] [2021] B All SA 812 (SCA) [2021 (6) SA 403 (SCA)

[16] Section 151 (2) of the Constitution of the Kingdom of Eswatini.

Accordingly, the argument for the Counsel for the Appellant that the Court *a quo* had no jurisdiction to hear and determine this matter has no merit.

[28] Counsel for the Appellant further argued that it was irrelevant for the Court *a quo* to use the Latin maxim – *Res Ipsa Loquitor* in a matter for a breach of a lease agreement. He contended that this Latin maxin is commonly used in claims for damages arising from negligence. From reading the judgment of the Court *a quo* I noted that the Latin maxim *Res Ipsa Lequitor* was used to emphasize that clause 20 of the lease agreement was very clear. Clause 20 was very clear that no agreement that was at variance with the terms of the lease agreement shall be binding on the parties unless reduced into writing and signed by the parties.

[29] It is my considered view that there is nothing that turned on the use of the Latin maxim – *Res Ipsa Loquitor* in the judgment of the Court *a quo*. The erroneous use of the Latin maxim did not in any way had a bearing on the outcome of the application.

COSTS AND COLLECTION COMMISSION

[30] Counsel for the Appellant argued that the Respondent was not entitled to an order for Costs of suits at attorney and own/client scale and an order for collection commission. He argued that there are judgments of the High Court where it was held that a successful party cannot be granted an order for costs at attorney and own/client scale and an order for collection. Mr Ndlangamandla failed to furnish the Court with the legal authorities in support of his argument; not withstanding that this Court allowed both Counsel to file additional legal authorities within ten (10) days after this matter had been argued.

[31] Counsel for the Respondent argued that the Appellant did not file an appeal against the order for costs at attorney and own/client scale and the order to pay collection commission. It was not in Appellant's grounds for appeal.

[32] It is now settled practice that a successful party cannot be granted both costs at attorney/client scale and collection commission. The issue of payment of punitive costs and collection commission has been dealt with in two matters in the High Court. It was dealt with in the matter of **Reid Attorneys vs Law Society of Swaziland**[17] and the matter of **Swaziland Civil (Pty) Ltd vs Kukhanya Civil Engineering Ltd.** [18] In both matters it was held that a creditor cannot recover legal costs as well as collection from a debtor as that would constitute a double jeopardy. This applies even in instances where the credit agreement provides for payment of both costs and collection commission. In the matter of **Swaziland Civils (Pty) Ltd vs Kukhanya Civil** (*supra*) at paragraph 13 Justice M. Dlamini stated the position of the law as follows:-

> *"In other words, to order a party to pay both costs of suit together with collection commission would result in double jeopardy. No doubt to allow a party to claim costs of suit together with collection commission based on the other party's mora arising from a single transaction would result in the language of Christie's (supra) in "excessive attorney's fees" which the law cannot countenance. At any rate, the purpose of ordering the losing party to pay legal fees is to reimburse the winning party of losses incurred as a result of the unwarranted legal process at the hands of the party. Our Courts have emphasized time and again that an order for costs of suits is not meant for the winning party to make profit."*

[17] (2039/2012) 2014 SZHC 21 (07/03/2014)
[18] (1154/2018) 2019 SZHC 12 (7/02/2019)

[33] It is also settled practice that before an order for costs at punitive scale is granted against a party, he or she should be given an opportunity to address the Court on the issue of the punitive costs. There is nothing on the Court record which shows that the Appellant was invited to address the Court on the issue of punitive costs. See Supreme Court judgment of Siphamandla Ginindza vs Mangaliso Clinton Msibi and 4 Others.[19]

[34] In the circumstances, it would be appropriate to correct the order issued by the Court *a quo* by removing the order for payment of collection commission and directing the Appellant to pay costs at ordinary scale.

COURT ORDER

[35] The Court issues the following order:-

35.1 The appeal is dismissed.

35.2 The Appellant is ordered to pay costs of this Appeal at ordinary scale.

35.3 The judgment of the Court *a quo* is confirmed with amendments to read as follows-

35.3.1 *The interim rule nisi issued by the Court a quo on 2nd February 2023 is hereby confirmed.*

35.3.2 *The Appellant is ordered to pay costs of the application in the Court a quo at ordinary scale.*

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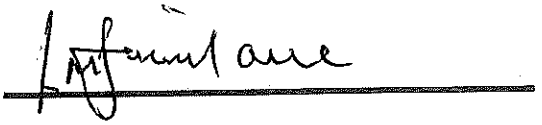
[19] Supreme Court Civil Case 29/2013



L.M SIMELANE

ACTING JUSTICE OF APPEAL

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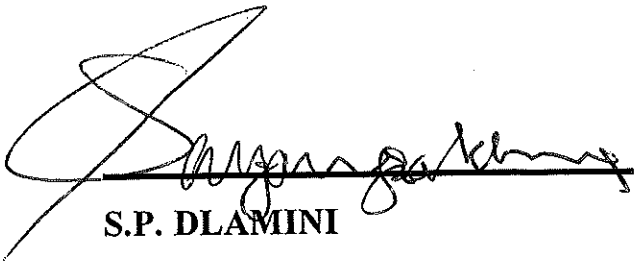

S.P. DLAMINI

JUSTICE OF APPEAL

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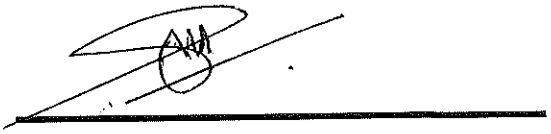

S.B. MAPHALALA

JUSTICE OF APPEAL

For the Applicants: M.L.K. Ndlangamandla (M.L.K. Ndlangamandla Attorneys)

For the Respondent: Mtungwa (Dynasty Inc Attorneys)