

THE HIGH COURT OF SWAZILAND

BRAKE SERVICES SWAZILAND (PTY) LTD

Plaintiff

And

M & B TRANSPORT (PTY) LTD

Defendant

Civil Case No. 2276/2002

Coram

S.B. MAPHALALA – J

For the Plaintiff

MR. J. HENWOOD

For the Defendant

MR. B. G. MDLULI

RULING ON COSTS

(26/11/2004)

[1] This matter came before me in the uncontested roll of the 19th November 2004, where it was removed from the roll by consent of the parties. Mr. Henwood who appeared for the Plaintiff applied for wasted costs of the day. Mr. Mdluli on the other hand argued au contraire and implored the Court to order costs to be in the course.

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[2] Mr. Henwood argued that the Plaintiff issued a notice in terms of Rule 35 (1), to compel discovery as far back as the 28th September 2004 and yet Defendant only responded to such Notice on the 15th November 2004, and thus bringing Plaintiff to Court unnecessarily. Therefore, Plaintiff is entitled to a costs order.

[3] It is a trite principle that the award of costs is a matter wholly within the discretion of Court (see Herbstein Van Winsen, The Civil Practice of the Supreme Court of South Africa, 4th ed at page 701 and the cases cited thereat).

[4] In the circumstances of the present case I would order that costs to be costs in the course.