

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA,  
GAUTENG LOCAL DIVISION, JOHANNESBURG

CASE NO. 2021/46706

|                        |                                                 |
|------------------------|-------------------------------------------------|
| (1)                    | REPORTABLE: NO/ <del>YES</del>                  |
| (2)                    | OF INTEREST TO OTHER JUDGES: NO/ <del>YES</del> |
| (3)                    | REVISED: NO/ <del>YES</del>                     |
| ..... 21/11/2023 ..... | ..... [REDACTED] .....                          |
| DATE                   | SIGNATURE                                       |

In the matter between:

**VASTINET (PTY) LTD**

**Applicant /Plaintiff**

And

**LMC ENTERPRISE (PTY) LTD**

**Respondent/Defendant**

---

**Judgment- Supplementary Order**

---

**Thupaatlase AJ**

**Introduction**

[1] This court granted summary judgment in favour of the plaintiff on the 20 November 2023 as follows:

**Order**

It is hereby ordered that the summary judgment is granted;

The defendant is ordered to pay the plaintiff: -

1.1. The sum of R 1 024 025.00.

1.2. Interest thereon at the rate of 7% per annum from the 17 August 2021.

1.3. The sum of R 37 950.00 per month from 01 September 2021 until the date when all the remaining goods are removed by the defendant from the plaintiff's place of business or from the place where the goods are stored.

[2] It is apparent order that the court did award costs. Upon receipt of the judgment, the plaintiff immediately alerted me to this omission. This was done through an email dispatched to my registrar. I checked and confirmed that there was indeed such an omission on my part. The purpose of this short judgment is to supplement my order accordingly and so that the correct position is reflected. This was on the same day judgment was uploaded on Caselines.

#### **The applicable legal principles**

[3] The normal principle regarding award of costs is that costs follow the results. This rule should not be departed from except where there are good grounds for doing so, such as misconduct on the part of the successful party or other exceptional circumstances. See *Meyers v Abramson* 1951 (3) SA 438 at page 455.

[4] The parties in this case addressed the court on costs with each party urging the court to award costs in its favour. This was based on each party being successful in its case. In the end, the plaintiff was successful and therefore costs should follow the results.

[5] The question is whether this court is still competent to make such an order, given the fact that, the initial order has omitted to mention costs.

[6] The purpose of an award of costs to a successful litigant is to indemnify the party for the expense it has been put through having been unjustly compelled to initiate or defend the litigation, as the case may be. See *Texas Co (SA) Ltd v Cape own Municipality* 1926 AD 467 at p 488. The successful party is the party in whose favour judgment is given.

#### **Is the court functus officio**

[7] The general principle that is that a judge has no authority to amend his/her own order. In *West Rand Estates Ltd v New Zealand Insurance Co. Ltd* 1926 173 the Court concluded after referring to old Roman authorities concluded that the court has jurisdiction to supplement its order.

[8] In the same judgment at page 184-185 the court per Solomon JA held that: 'Our jurists recognise the right of a Court to supplement its order where through oversight it has omitted, in giving judgment, for the principal, to include something which is accessory to the principal'. Kotze JA put this authority more definitively at page 186-187 of the *West Rand Estate* supra that: 'The general rule of Roman Dutch law, in regard to the varying or amending of a definitive sentence once pronounced, is that it cannot be varied in substance. The books on practice, however, add that so far, anything ancillary to the principal matter adjudged upon is concerned, such as costs, fruits and interest, the judge may alter his judgment provided this done on the same day on which he has pronounced it'.

[9] In *Thompson v South African Broadcasting Corporation* 2001 (3) SA 746 (SCA) the court stated at para 5 that: 'the correct position was spelt out in *Firestone South Africa (Pty) Ltd v Gentiruco AG* 1977 (4) SA 298 (A) at 307C-G:

"The Court may correct a clerical, arithmetic or other error in its judgment or order so as to give effect to its true intention.... This exception is confined to the mere correction of an error in expressing the judgment or order; it does not intend altering its intended sense or substance. Kotze JA made this distinction manifestly clear in [*West Rand Estates Ltd v New Zealand Insurance Co. Ltd* 1926 AD at 186-187], with reference to the old authorities he said:

"The Court, can however, declare and interpret its own order or sentence, and likewise correct wording of it, by substituting more accurate or intelligent language so long as sense and substance of the sentence are in no way affected by such correction; for to interpret or correct is held not to be equivalent to altering or amending a definitive sentence once pronounced".

And in *S v Wells* 1990 (1) SA 816 (A) at 820C-F then matter was dealt in these words:

'The more enlightened approach, however, permits a judicial officer to change, amend or supplement his pronounced judgment, provided that the substance of his judgment is not affected thereby (*tenore substantiae perseverante*)... According to Voet a Judge may also, on the same day, after the pronouncement of his judgment add (*supplere*) to it all remaining matters which relate to the consequences of what he has already decided but which are still missing from his judgment. He may also explain (*explicare*) what has been obscurely stated in his judgment and does correct (*amendere*) the wording of the record provided the tenor of the judgment is preserved'.

I accept the legal position as postulated in these dicta.

## **Conclusion**

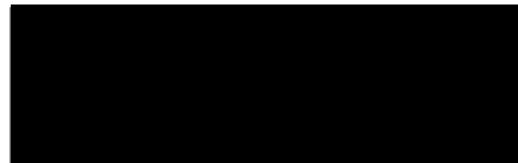
[10] I am satisfied that I am not functus officio in regard to the award of costs in this matter. According to authority it is permissible that in the circumstances of this case I can supplement my earlier order. The established principle is that the principal

judgement or order may be supplemented in respect of accessory or consequential matters which include costs. This will be permissible where the Court overlooked or inadvertently omitted to grant such orders as in the present case. I am satisfied that I inadvertently omitted to include the award of costs in my order. This was despite the issue of costs being argued before.

**Order**

The order granted on 20 November 2023 in favour of the plaintiff is hereby supplanted as follows:

Costs in respect of summary judgement granted on 20 November 2023 hereby granted in favour of the plaintiff.



THUPAATLASE AJ  
HIGH COURT ACTING JUDGE  
GAUTENG LOCAL DIVISION

Date of Hearing: 26 October 2023

Judgment Delivered: 21 November 2023

For the Applicant: Adv. S Ameer

Instructed by: Suveshin Co. Incorporated.

For the Respondent: Adv. N W Maodi

Instructed: Maponya K Associates Inc.