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**IN THE HIGH COURT OF SOUTH AFRICA
(EASTERN CAPE DIVISION, EAST LONDON)**

Date Heard: 12 October 23

Date Delivered: 21 November 23

CASE NO: EL 805/23

In the matter between:

VELISWA NDONGENI

Applicant

And

BUFFALO CITY METROPOLITAN MUNICIPALITY

First Respondent

THE MUNICIPAL MANAGER: MXOLISI YAWA

BUFFALO CITY METROPOLITAN MUNICIPALITY

Second Respondent

JUDGEMENT

MJAME AJ :

[1] This matter served before me for purposes of a determination of the issue of costs only.

FACTUAL BACKGROUND

[2] A rule nisi was granted in this matter on the 09 May 2023 after the application was brought before this court as one of urgency.

[3] In terms of the rule nisi, the Respondent was called upon to show cause, on the 23 May 2023, why the granted order should not be made final:

“3.1 That the Respondents are ordered and directed to reconnect the electricity supply to the premises situated at NO 1[...] N.U.14, with electricity meter No .070[...]and account number 101 [...] forthwith.

3.2. The Respondents are interdicted and restrained from terminating and disconnecting the electricity supply to the premises situated at No 1[...], NU 14, Mdantsane with electricity Nu 070[...] and account number101[...], without the requisite 14 day notice.

3.3. The Respondent are interdicted and restrained from charging a reconnection fee.

3.4 Costs to be costs in the cause.

3.5. Paragraph 4.1, 4.2, 4.3 shall operate as mandamus and /or interim order pending finalization of this matter.”

- [4] The Respondents filed a notice to oppose the application. They also filed an answering affidavit disputing the facts in the Applicants founding affidavit. In a nutshell the Respondents disputed the fact that the electricity was disconnected at the applicant's premises. They also contended that the Buffalo City Metropolitan Municipality adopted a Credit Control Policy in terms of section 96(b) of the Local Government Systems Act, No .32 of 2000 which provides for the 80/20 payment structure for people who are in arrears and thus obviate the need to switch off electricity.
- [5] On the return day the interim order was extended. In between the process the Applicant and the Respondents were communicating through emails, in which the respondents were informing the applicant about the progress in the matter.
- [6] The Respondents informed the Applicant's attorney that the electricity was not blocked, but there was an electric fault in wiring. Ultimately the electricity fault was resolved and the electricity supply was restored at the Applicants premises in June 2023.
- [7] The Applicant brought an application before this court that the respondent must be found to be in contempt of the court order issued on the 9 May 2023. However, the Applicant later abandoned this application.

APPLICANT'S SUBMISSIONS

- [8] The Applicant's representative argued that the respondents must be found liable for the costs incurred in bringing the application. He further submitted that the Respondents failed to comply with the court order issued on 9 May 2023. Numerous notices had been served on the Respondents informing them to comply with the court order dated 9 May 2023, he argued. He further argued that the Respondents reconnected the electricity at applicant's premises after a notice was issued notifying them of the imminent contempt proceedings. Thereafter the contempt application was instituted and

served. By the time the Respondents complied, a directive had been issued and the Applicant had filed all her papers in accordance with the directive. It was argued that the Applicant had in all respects succeeded with the purport of the coercive contempt proceedings and there is no reason why the Respondents should not be ordered to pay costs.

RESPONDENTS' SUBMISSIONS

[9] The Respondents, on the other hand, argued that the application by the applicant for costs must be dismissed. The Respondents were not contemptuous towards the court order. It was submitted on behalf of the Respondents that there is a dispute of facts. The Respondents did not block or disconnect the electricity at the applicant's premises. It was further submitted that Respondents did not act with malice. The issue of fault and reconnection of the electricity was dealt with immediately after it was brought to the Respondent's attention. The electricians were deployed to the site where it transpired that there was a fault with the electric wiring. It was further argued that the Respondents never disregarded court orders. The court orders issued were not served according to the directives in terms of Rule 4 (1) (a) (viii) of the Uniform Rules of Court. It was further submitted that the court must consider the *Plascon Evans Rule* in deciding whether the Respondents are liable for costs.

THE LAW

[10] In awarding costs, a court has a discretion which should be exercised judicially. A court should consider the circumstances of each case, weighing the issues in the case, the

conduct of the parties and any other circumstances which may have a bearing on the issue of costs and then make an order that would be fair and just between the parties.

- [11] The purpose of an award of costs is to indemnify a successful party who has incurred expenses in instituting or defending action. In ***Mancisco and Sons CC (in liquidation) v Stone***¹ Flemming DJP stated as follows:-

“The award of costs rests upon the object of reimbursing a person of costs to which he was wrongly put.”

That underlies the basic principle that a successful party should get the costs.

- [12] The principles applicable in the determination of costs was dealt with by the Constitutional Court in ***Ferreira v Levin and others, Vryenhoek and others v Powell NO and Others***² as follows:-

“The Supreme Court has, over the years, developed a flexible approach to costs which proceeds from two basic principles, the first being that the award of costs, unless expressly otherwise enacted, is in the discretion of the presiding judicial officer, and the second that the successful party should, as a general rule, have his or her costs. Even this second principle is subject to the first. The second principle is subject to the large number of exceptions where the successful party is deprived of his or her costs. Without attempting either comprehensiveness or complete analytical accuracy, depriving successful parties of their costs can depend on the circumstances, such as, for example, the conduct of parties, the conduct of their legal representatives, whether a party achieves technical success only, the nature of the litigants and the nature of the proceedings.”

- [13] I have considered the circumstances which led the applicant to launch these applications and considered the facts as per founding and answering affidavits. I am of the view that

¹ 2001 (1) SA (WLD) 168 at 170 paragraph F.

² [1996] ZACC 27, 1996 (2) SA 621 at page 624 paragraph 3.

the Respondents were not at fault and are thus not liable to pay Applicant's costs. In the circumstances it will be fair and just that each party should pay its own costs.

ORDER

In the result, I order as follows:-

Each party is to pay its own costs.

P.C.N.MJAME

Acting Judge of the High Court

Appearances:

For the Applicant : Mr L. Mati (Counsel) *instructed by*
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For The Respondents : Mr Mafu (Counsel) *instructed by*
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