

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG LOCAL DIVISION, JOHANNESBURG

(1) REPORTABLE: *no*
(2) OF INTEREST TO OTHER JUDGES: NO
(3) REVISED:

Date: 8/11/2024

Signature: [REDACTED]

Case Number: 082843/2024

In the matter between

SB NGENTO ATTORNEYS

First Applicant

SB NGENTO

Second Applicant

and

D MBIZA obo M MBIZA

First Respondent

ROAD ACCIDENT FUND

Second Respondent

LEGAL PRACTICE COUNCIL

Third Respondent

JUDGMENT – LEAVE TO APPEAL

MAHOMED, AJ

1. The applicant applies for leave to appeal an order for costs which I granted in a judgment I handed down on 30 August 2024. It was contended that I did not provide reasons as to the order for costs. It is worthy of mention that the applicant failed to request reasons for the order for costs, instead

I received a lengthy notice of appeal before any reasons were provided. I provided the reasons and what followed was a lengthy notice again, when counsel argued that I introduced new facts which were not included in the judgment and that I was influenced by the pending investigation by the LPC, I disagree, in my judgment I merely referred to the pending investigation.

2. Counsel introduced his own complexities to the judgment and order for costs. I made a fair order on costs because both parties were successful to point, the rule was discharged, and the respondent received the monies which the applicant held for over a year without any reasons or an explanation for retaining the funds, despite the order by Yacoob J.
3. Each party was to pay their own costs, the applicant was not the outright winner, both parties were successful, I am of the view that another court would not arrive at a different finding on the costs. I set out in my reasons for judgment¹. It is trite that costs are at a discretion of the court, I set out the facts² I considered when I decided on the costs. It is worth mentioning that the respondent is in court only because of the applicant's unauthorised retention of her monies, there is nothing fair or moral to order her to pay his costs. An appeal court will not find any good grounds to interfere with this finding, a court must also look to the substance of the judgment and not merely the form. I am of the view that there are no prospects of success in the appeal. I agree with Advocate Hilita, the applicant simply argues on points of semantics and creates his own complexities.

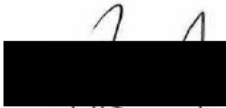
Accordingly, the application for leave is refused.

¹ CL 18-71 para 2

² *Gelb Hawkins* 1960 (3) SA 687 A at 694

I make the following order

1. Leave to appeal is refused.
2. The applicant shall pay the respondent's costs on a party party scale.



MAHOMED AJ
Acting Judge of the High Court

This judgment was prepared and authored by Acting Judge Mahomed. It is handed down electronically by circulation to the parties or their legal representatives by email and by uploading it to the electronic file of this matter on Caselines. The date for hand-down is deemed to be 8 November 2024.

Date of Hearing : 23 October 2024

Date of Judgment: 8 November 2024

Appearances

For applicant: Advocate Heyman

For Respondent: Advocate Hilita .