



**IN THE HIGH COURT OF SOUTH AFRICA
KWAZULU-NATAL DIVISION, PIETERMARITZBURG**

Case No.: 5214/2024

Before: Honourable Ncube J

Heard on: 14 April 2025

Delivered on: 17 June 2025

DELETE WHICHEVER IS NOT APPLICABLE	
(1) REPORTABLE: YES / NO	
(2) OF INTEREST TO OTHER JUDGES: YES / NO	
(3) REVISED: YES / NO	
17/06/2025	[REDACTED]
DATE	SIGNATURE

In the matter between:

TACTICAL SECURITY SERVICES CC

Plaintiff

and

NEWCASTLE LOCAL MUNICIPALITY

First Respondent

**THE MUNICIPAL MANAGER:
NEWCASTLE MUNICIPALITY**

Second Respondent

FBL TRADING ENTERPRISE (PTY) LTD

Third Respondent

AMABUSO SECURITY SOLUTIONS (PTY) LTD

Fourth respondent

**MABOTWANE SECURITY SERVICES CC
IZINHLOLI HOLDINGS (PTY) LTD**

**Fifth Respondent
Sixth Respondent**

ORDER

The following order is granted:

1. The *rule nisi* issued by the Honourable Mr Justice Chili on 04 April 2024 is confirmed.
 2. The first and second respondents, jointly and severally, one paying the other to be absolved, are ordered to pay the applicant's party and party costs on Scale "B"
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JUDGMENT

Ncube J

Introduction

[1] During the argument of this application, all the parties agreed that the merits were now *moot* and need not be argued further. The only issue remaining for the determination by this court is the issue of costs. The applicant, Tactical Security Services CC ("Tactical Security") seeks costs against the Newcastle Local Municipality ("the Municipality"). The basis for the cost order sought is that the Municipality was late in issuing the undertaking that the third party service providers' appointment would only start from 01 May 2024 and not before 30 April 2024. Tactical Security alleges that the undertaking was provided after Tactical Security had incurred costs already.

Factual Background

[2] On 23 April 2022, a written Service Level Agreement ("the SLA") was concluded between Tactical Security and the Municipality. In terms of the SLA, Tactical Security was going to provide security service at the various municipal premises including provision of VIP protection. The contract was going to terminate on 30 April 2024.

[3] On 20 September 2023 the Municipality sought to terminate the agreement prematurely, consequently, Tactical Security brought an application in an endeavour to enforce its rights in terms of the agreement. The relief sought was granted. The Municipality's purported termination of the agreement was declared invalid and unlawful. The third to sixth respondents had commenced rendering security services to the Municipality on 01 April 2024 as the Municipality had erroneously provided the third to sixth respondents with letters of appointment.

[4] In a letter addressed to the Municipality, the attorney for Tactical Security requested a written undertaking from the Municipality that the Municipality would abide by the terms of the agreement and honour the termination date being 30 April 2024. That undertaking was sought before the close of business on 02 April 2024. In the morning of 02 April 2024, Mr Marais from the Municipality gave a verbal undertaking to Tactical Security representative that Tactical Security could continue with provision of security services to the Municipality, promising at the same time to confirm the verbal undertaking with an e-mail. The e-mail was never sent.

[5] Despite the verbal undertaking, on 02 April 2024, the third respondent's employees were on site at Newcastle Civic Centre and the sixth respondent employees were on site at central B substation. The written undertaking was given on 03 April 2024 at 16:18 after unissued urgent application papers had been served by e-mail to both the Municipality and the Municipal Manager. The urgent application was set down for hearing on 04 April 2024 at 12:41. On 04 April 2024, before the hearing, the attorney for the Municipality sent an e-mail to the attorney representing Tactical Security to the effect that the Municipality was going to honour the agreement and allow Tactical Security to render services till the end of April 2024. The Municipality requested that the application be removed from the roll, which was done.

Issues

[6] The issue to be determined is whether Tactical Security is entitled to the costs of the application. The contention by the Municipality is that the default was remedied before the application papers were issued and served. However, at the same time, the Municipality does not deny that when a written undertaking was provided, unissued

application papers had been prepared and served by e-mail. In that process the applicant incurred costs

Approach to Issue of Costs

[7] The award of costs is in the discretion of the presiding judicial officer. As a general rule, the successful party should not be out of pocket. To that end, in *Ferreira v Levin N.O. and Others, Vryenhoek and Others v Powell N.O. and Others*¹ Ackerman J said:

“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 a 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 circumstances such as, for example, the conduct, of the parties and the conduct of their legal representatives, whether a party achieves technical success only, the nature of the litigants and the nature of the proceedings. I mention these examples to indicate that the principles which have been developed in relation to the award of costs are by their nature sufficiently flexible and adaptable to meet new needs which may arise in regard to constitutional litigation.....”

[8] The Municipality concedes that it made an error in appointing new service providers before Tactical Security contract came to an end. However, the Municipality was wrong in not providing a written undertaking on time before the applicant commenced preparing the papers for the urgent application.

Scale of Costs

[9] The Tactical Security seeks costs on attorney and client scale. Tactical Security cannot justify the award of punitive costs. Although the Municipality did not provide undertaking in time, such undertaking was provided immediately thereafter. Except for

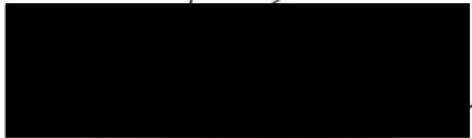
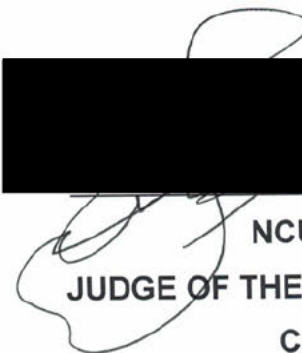
¹ 1996(2) SA 621 (CC) Para 3

the preparation and service of the papers by e-mail, not much had been done by Tactical Security. The conduct of the Municipality, specifically with regard to Tactical Security costs in the preparation and service of the papers does not warrant an award of punitive costs against both the Municipality and the Municipal Manager.

Order

[10] In the result, I make the following order:

1. The rule nisi issued by the Honourable Mr Justice Chili on 04 April 2024 is confirmed.
2. The first and second respondents jointly and severally, one paying, the other to be absolved, are ordered to pay the applicant's party and party costs on Scale "B"



NCUBE J
JUDGE OF THE HIGH
COURT

Appearances

Heard: 14 April 2025

Delivered: 13 June 2025

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