IN THE HIGH COURT OF SOUTH AFRICA **[UNREPORTABLE]**

(EASTERN CAPE DIVISION: GRAHAMSTOWN)

CASE NO: CA 262/2017

DATE HEARD: 08 JUNE 2018
DATE DELIVERED: 12 JUNE 2018

In the matter between:

JONGISIPHO DESMOND LUZIPO APPELLANT

AND

FREEMAN NTABAYIKONJWA RESPONDENT

CORAM: DAWOOD J et JAJI J

APPEAL JUDGMENT

DAWOOD, J:

1. The Appellant herein appeals against the cost order made by the learned Magistrate M Louis on the 4th August 2017 wherein he awarded the Appellant costs on a party and party scale, including the costs of counsel taxable on the Magistrate court scale.
2. The facts of this matter are briefly as follows:-

A

i) That the Respondent herein sought *inter alia* an order rescinding a default judgment obtained by the Appellant on 22 February 2017.

ii) This rescission application formed part of an urgent application that had been launched *ex parte* for the return of the Respondent's goods which had been attached and removed by the sheriff pursuant to the default judgment.

iii) The Magistrate expressed some reservation with regard to whether or not the issue of urgency had been dealt with extensively in the ex parte application but did not deal with this aspect as the goods had been returned to the Respondent.

iv) He dealt with the issue of condonation and the rescission.

v) It is evident that the respondent immediately upon receiving the summons approached legal wise to assist him and went to Kuban Chetty to defend the matter.

vi) He only became aware that judgment had been obtained against him when the sheriff attached his goods on the 16 March 2017.

vii) He immediately approached his attorneys and they applied for rescission which was set down for the 11 April 2017 but they had failed to comply with the time limits.

viii) He was unaware that the judgment had not been rescinded until his goods were removed by the sheriff.

ix) He immediately contacted his attorneys to enquire as to why his goods had been removed.

x) With regard to the merits of the rescission he stated *inter alia*:

a) That the Appellant had approached him and verbally abused him and thereafter slapped him in the presence of everyone who attended the function.

b) He accordingly denied that he had infringed the Appellants dignity but alleged that the Appellant had in fact infringed his dignity.
c) He admitted assaulting the Appellant with a knob-kerrie but denied that it was wrongful because he was terrified as the Appellant carries a firearm on his person and had kicked him.
d) He alleged that he had a *bona fide* defence and this is not a delaying tactic.
e) It is common cause that the respondent failed to disclose in his founding papers that he had pleaded guilty and was convicted of assault GBH for stabbing the Appellant.
f) The Appellant:
    i) Correctly set out factors that demonstrated that the rescission application was out of time and that a proper case for condonation had to be made out.
    ii) Correctly stated that Respondent had to show that he has good prospects of success in the rescission application.
    iii) Correctly stated that it was not reasonable for the Respondent to simply hand the matter to an attorney and not follow up.
    iv) Correctly stated that the Respondent did not comment on the allegation that he had stabbed the Appellant in the left lower back with a sharp object and that he was convicted and sentenced on the 11 December 2013 pursuant to his plea of guilty of assault with intent to commit grievous bodily harm and that he was initially charged with attempted murder.

v) Further stated that the Respondent had failed to tender the Appellant's wasted costs arising from the steps taken to obtain default judgment and the wasted costs occasioned by the execution steps taken to date.

vi) Correctly stated that judgment once rescinded is a nullity and neither advantage nor disadvantage can flow therefrom (the wasted costs) cannot flow therefrom accordingly and the Appellant would not be in a position to claim the wasted costs.

vii) Correctly stated an application for rescission of a default judgment is regarded as an indulgence and as a general rule, the applicant would be ordered to pay the costs of such an application if the Respondent's opposition thereto was reasonable.

viii) Accordingly sought that the wasted costs be ordered to be taxable and payable immediately as such costs were incurred when his case was conducted reasonably and strictly in accordance with the rules of court. The respondent was solely to blame for the incurrence of those costs and the costs of the rescission.

ix) Accordingly sought the order, in the event that the court was disposed to granting the rescission that the Respondent pay the party and party cost arising from the default judgment proceedings and the execution steps, such costs to be immediately taxable and payable; that the Respondent pay the Appellant's party and party costs of the application on an opposed basis including counsels costs on application at *3 times* the tariff, such costs to be immediately taxable and payable.

B Magistrate's reasons:

i) The Magistrate correctly enunciated the test for granting or refusing condonation in his judgment as required by Rule 60 (5) and 60 (9) and went on to quote the judgment *of Madinda v Minister of Safety*[1] Heher JA which reads as follows:

> *"[10] The second requirement is a variant of one well known in cases of procedural non-compliance. See Torwood Properties (Pty) Ltd v South African Reserve Bank* ***1996 (1) SA 215*** *(W) at 227I-228F and the cases there cited. 'Good cause' looks at all those factors which* ***bear on the fairness of granting the relief*** *as between the parties and as affecting the proper administration of justice. In any given factual complex it may be that only some of many such possible factors become relevant. These may* ***include prospects of success*** *in the proposed action,* ***the reasons for the delay,*** *the sufficiency* ***of the explanation offered****, the bona fides of the applicant, and any contribution by other persons or parties to the delay and the applicant's responsibility therefore.*

ii) The above approach was adopted by Judge Pickering in *Minister of Safety and Security v Butana*[2].

iii) He went on to say that the Respondent's instruction to his attorney of record was almost immediate upon the sheriff serving the warrant of execution.

iv) The Respondent had no reason to doubt that his attorney did not act in accordance with his instruction.

v) He accordingly granted condonation on that basis.

vi) With regard to the rescission he was alive to the requests set out in Rule 49 (1) and (3) that the Respondent needed to satisfy the court that:

[1] (153/07) [2008] ZASCA 34; [2008] 3 All SA 143 (SCA) 2008 (4) SA 312 (SCA) (28 March 2008)
[2] (CA165/2014) [2014] ZAECGHC 90 (29 October 2014)

a) Good cause exists;
b) That he was not in wilful default.
c) That he has a bona fide defence.

vii) He found that judicial discretion was to be exercised in determining whether good cause existed and the purpose was not to penalise a party for not complying with the rules and procedures. The primary point would be what will be in the interest of justice and the prejudice suffered by the other party.

viii) The learned Magistrate with regard to undue delay, and wilful default stated that despite the fact that the Respondent was careless in not ascertaining what had become of the matter, the court was nonetheless unable to find that the Respondent was deliberate in not acting or even that he was grossly negligent. He acted immediately to contact legal wise and his attorney of record.

ix) On the issue of bona fide defence the learned Magistrate took cognisance of the argument that the Respondent had failed to disclose vital information regarding the stabbing and the plea in the magistrate court.

x) The Magistrate appears to have elected not to draw an adverse inference from this failure stating that the guilty plea in fact confirms an altercation between the parties as averred in the Respondent's founding affidavit. The plea was an annexure to the answering affidavit.

xi) The court was accordingly satisfied that the Respondent had made out a prima facie defence and accordingly confirmed the rule nisi and granted condonation and rescission of the default judgment.

xii) The court *a quo* indicated that it had considered costs *de bonis propiis* because of the laxity of the attorney but found that the Respondent had also failed to make enquiries regarding the progress of the matter for a period of 9 months.

xiii) The learned Magistrate further found that the Appellant had indeed incurred costs in securing judgment but such costs were not exorbitant in that no additional evidence was led other than that of the Appellant. The court was guided by the decision in *Scholtz and Another v Merryweather and Others*[3] where the court did not find that a punitive cost order was warranted despite the circumstances.

xiv) The learned Magistrate accordingly awarded costs in favour of the Appellant on a party and party scale including the costs of counsel taxable on the magistrate's court tariff.

3. Legal position

a) The Appellant has correctly conceded that the magistrate decision to rescind the default judgment is not appealable having regard to the dicta in **De Vos v Cooper and Ferreira**[4] but argued that it was nevertheless necessary to enter upon the merits in order to decide whether the order as to costs had been properly made[5]

b) The aforesaid judgment is also authority for the proposition that the Magistrate Court order as to costs was appealable under section 83 (b) of the Magistrate's Act 32 of 1944.

[3] (7965/2009) [2014] ZAWCHC 116; 2014 (6) SA 90 (WCC) (1 August 2014) Scholtz v Merry weather ZAWCHC 2014 (116)
[4] 1999 (4) SA 1290 see headnote at 1294
[5] At 1302 E - P

c) It is also trite law that a court of appeal will only interfere with a costs order of a lower court when the court **has not exercised its discretion judicially** or has misdirected itself.

d) Cloete JA in **Naylor and Another v Jansen**[6] deals with the arguments raised by the Respondent in this appeal with regard to costs orders not being appealable on their own:

> *"[10] It would be convenient at this stage to dispose of the defendants' argument that the appeal should be dismissed because of the provisions of s 21A of the Supreme Court Act, 59 of 1959. That section provides, to the extent relevant for present purposes:*
>
> *'(1) When at the hearing of any civil appeal to the Appellate Division or any Provincial or Local Division of the Supreme Court the issues are of such a nature that the judgment or order sought will have no practical effect or result, the appeal may be dismissed on this ground alone.*
>
> *...*
>
> *(3) Save under exceptional circumstances, the question whether the judgment or order would have no practical effect or result, is to be determined without reference to consideration of costs.'*
>
> *I had occasion in Logistic Technologies (Pty) Ltd v Coetzee*[7] *to express the view that a* ***failure to exercise a judicial discretion would*** *(at least usually) constitute an* ***exceptional circumstance****. I still adhere to that view — for if the position were otherwise, a* ***litigant adversely affected by a costs order*** *would* ***not be able to escape*** *the* ***consequences of even*** *the most* ***egregious misdirection*** *which resulted in the order,* ***simply because an appeal would be concerned only with costs****; and that obviously cannot be the effect of the section. Indeed, I understood senior counsel representing Jansen on appeal, who was not responsible for the heads of argument in which the point was taken, effectively to concede the point."* ***(My emphasis)***

[6] (508/05) [2006] ZASCA 94; [2006] SCA 92 (RSA); 2007 (1) SA 16 (SCA) (31 August 2006) at page 22 par 10

[7] 1998 (3) SA 1071 (W) at 1075J-1076A.

e) Cloete JA goes further to deal with the issue of costs albeit in the context of the Rule 34 order and states inter alia as follows:

> *[11] In view of the attack launched by the defendants on the judgment of the trial court, it is necessary to set out the law in regard to the nature and proper exercise of the discretion vested in a trial judge when it comes to the making of an appropriate order as to costs and the circumstances under which an appeal court can interfere with the exercise of that discretion.*
>
> *[12] Where a plaintiff in an action sounding in money has not succeeded in obtaining an award which exceeds an offer made without prejudice, there are two important considerations to be borne in mind by the judge exercising the discretion. The first is the purpose behind the rule. The second is that the rule in no way fetters the judicial exercise of the discretion.*
>
> *...*
>
> *[14] Ordinarily, the purpose behind rule 34 would cause the judge to order the defendant to pay the plaintiff's costs incurred up to the date of the offer and the plaintiff to pay the defendant's costs thereafter.*[8]
> *That does not mean, however, that there is a 'rule' to this effect, from which departure is only justified in the case of 'special circumstances', as suggested in Van Rensburg v AA Mutual Insurance Co Ltd.*[9] *and Mdlalose v Road Accident Fund.*[10] *All it means is that the exercise of the court's discretion as to costs in this way would usually be proper and unimpeachable and failure to do so would, if unjustifiable, amount to a misdirection. But it needs to be emphasised, as the proviso to rule 34(12) makes clear, that the rule does not dictate this result, even provisionally. Where the* ***law has given a judge an unfettered discretion****, it is* ***not for this court to lay down rules which****, whilst purporting to guide the judge,* ***will only have the effect of fettering the discretion****.*

[8] *Omega Africa Plastics (Pty) Ltd v Swisstool Manufacturing Co (Pty) Ltd*, above n 9, at p 477B.
[9] 1969 (4) SA 360 (E) at 366 *in fine* – 367B.
[10] 2000 (4) SA 876 (N) at 885B-C.

If therefore there are factors which the trial court in ***the exercise of its discretion can and legitimately does decide to take into account*** *so as* ***to reach a different result,*** *a court on appeal* ***is not entitled to interfere — even although it may or even probably would have given a different order.***[11] *The reason is that the discretion exercised by the court giving the order is not a 'broad' discretion*[12] *(or a 'discretion in the wide sense'*[13] *or a 'discretion loosely so called'*[14]*) which obliges the court of first instance to have regard to a number of features in coming to its conclusion, and where a court of appeal is at liberty to decide the matter according to its own view of the merits and to substitute its decision for the decision of the court below, simply because it considers its conclusion more appropriate.*[15] *The discretion is a discretion in the strict or narrow sense*[16] *(also called a 'strong' or a 'true' discretion).*[17]

In such a case the ***power to interfere on appeal is limited to cases in which it is found that the court vested with the discretion did not exercise the discretion judicially****, which can be done* ***by showing that the court of first instance exercised the power conferred on it capriciously or upon a wrong principle, or did not bring its unbiased judgment to bear on the question or did not act for substantial reasons****.*[18] *Put differently, an appeal court will only interfere with the exercise of such a discretion where it is shown that*

'... the lower court ***had not exercised its discretion judicially, or that it had been influenced by wrong principles or a misdirection on the facts, or that it had reached a decision which in the result could not reasonably have been made by a court properly directing itself to all the relevant facts and principles.'***[19] ***(My emphasis)***

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[11] The principle has often been stated by this court – see eg *Fripp v Gibbon and Co* 1913 AD 354 at 361, 363 and 365; *Penny v Walker* 1936 AD 241 at 260; *Molteno Bros v South African Railways* 1936 AD 408 at 417; *Merber v Merber* 1948 (1) SA 446 (A) at 452-3; *Cronje v Pelser* 1967 (2) SA 589 (A) at 592H-593A.

[12] *Dikoko v Mokhatla*, above n 2, para 59.

[13] *Media Workers Association of South Africa v Press Corporation of South Africa Ltd ('Perskor')* 1992 (4) SA 791 (A) at 800C-D.

[14] *Bookworks (Pty) Ltd v Greater Johannesburg Transitional Metropolitan Council* 1999 (4) SA 799 (W) at 804J.

[15] *Knox D'Arcy Ltd v Jamieson* 1996 (4) SA 348 (A) at 360D-362G; *S v Basson* 2005 (12) BCLR 1192 (CC) para 154.

[16] *Ganes v Telecom Namibia* Ltd 2004 (3) SA 615 (SCA) para 21.

[17] *S v Basson*, n 19 above, para 110; *Dikoko v Mokhatla*, above n 2, para 59.

[18] *Benson v SA Mutual Life Assurance Society* 1986 (1) SA 776 (A) at 781I-782B and cases there cited.

[19] *National Coalition for Gay & Lesbian Equality & Others v Minister of Home Affairs* 2000 (2) SA 1 (CC) para 11.

f) In **Caxton Ltd and Others v Reeva Forman (Pty) Ltd and Another**[20] Corbet CJ stated that the reluctance of a court of appeal to interfere with the exercise by a trial court in awarding costs is well known.

g) In **Multi-links telecommunications v Africa Prepaid**[21] Fabricus J dealt with two points that are relevant to this matter namely undisclosed facts and costs:

"*33.It is of course true that full disclosure of every material fact needs to be made in ex parte applications, but the real question is whether any undisclosed facts were related to those which* ***"might influence the court into coming to a decision"****. They do not relate to all conceivable matters that may be relevant to the subject matter of the ex parte application. The usual sanction for non-disclosure of such facts is that the ex parte order is set aside,* ***but that is also not even an automatic consequence.***

34. Costs are ordinarily ordered on the party and party scale*. Only in exceptional circumstances and pursuant to* ***a discretion judicially exercised is a party ordered to pay costs on a punitive scale.*** *(My emphasis)*

h) In **Mabusela v Eastern Cape Development Corporations**[22] , Brooks AJ (as he then was) found that to determine whether a court should grant a rescission of judgment:-

"... The question is, rather, whether or not the explanation for the default and the accompanying conduct by the defaulters, be it wilful or negligent or otherwise, gives rise to the probable inference that there is no bona fide defence, and that the application for rescission is not bona fide. The magistrate's discretion to rescind the judgments of his court is therefore primarily designed to do justice between the parties. He should exercise that discretion by balancing the interests of the parties, bearing in mind the considerations referred to in GRANT v PLUMBERS (PTY) LTD[23] and HDS CONSTRUCTION v WAIT[24] and also any prejudice that might be occasioned by the outcome of the application."

[20] 1990 (3) SA 547 (AD) at 578 A
[21] (35347/13, 30004/13) [2013] ZAGPPHC 261; [2013] 4 All SA 346 (GNP); 2014 (3) SA 265 (GP) (6 September 2013) at paragraphs 33 - 34
[22] (CA&R40/2013) [2015] ZAECMHC 76 (3 November 2015) at paragraph 6; 2015 JDR 2422 (ECM)
[23] 1949 (2) SA 470 (O)
[24] 1979 (2) SA 298 (E)

i) In **Alice Mildred Brand v the Road Accident Fund**[25] , Kroon J with Plasket J concurring held at paragraphs 10, 11, 14, 16 and 29 as follows with regard to the issue of costs:

"10. Counsel were agreed, and correctly so, that the following principles were applicable. An order for costs ***falls within the discretion of the trial court****. An appellate* ***tribunal will not readily interfere with the exercise by a trial court of such discretion****. It will only do so where the trial court* ***exercised its discretion****,* ***not judicially****, but capriciously or upon a wrong principle or where the order is incompetent. The question to be asked is* ***whether the exercise of the discretion was based on grounds on which a reasonable person could have reached the same decision****, even if the appellate tribunal* ***would probably have made a different order****.*

Non-interference by an appellate tribunal would not mean that the order made by the trial court would be the only reasonable order that could be made or that the same order should be applicable in a similar matter.

See eg. Cronje v Pelser 1967 (2) SA 589 (A) at 592H-593A; Merber v Merber 1948 (1) SA 446 (A) at 452-3.

11. In his judgment the magistrate recorded that he had been referred to two unreported decisions in this Division: Road Accident Fund v Forbes (Case No CA 197/05, 28 September 2006) and van Zyl v Road Accident Fund (Case No CA 243/07, 19 October 2008). Both decisions were given in appeals against costs orders made by a magistrate in matters of the same nature as the present. In the first matter Jones J (with whom Schoeman J concurred) inter alia upheld the magistrate's order allowing counsel's fees at three times the amount set out on the tariff. In the second matter Jones J (Makaula AJ concurring) set aside a magistrate's refusal to allow counsel's fees at a rate higher than the tariff provided for and substituted therefor an order that the defendant pay the costs of counsel's fees in an amount not exceeding three times the amount set out in the tariff (the taxing master to determine the actual amount to be allowed). The magistrate, however, sought to distinguish these two decisions.

[25] (CA170/09) [2009] ZAECGHC 85 (30 November 2009)

…

16. It follows from what has gone before that the magistrate materially misdirected himself in his determination of the rate at which counsel's fees should be allowed. His conclusion ***was vitiated thereby****, and this court is at large to determine the matter afresh.*

…

29. The appeal succeeds, the costs order issued by the magistrate is set aside and for it is substituted the following:

"The defendant will pay the plaintiff's taxed party and party costs, such costs to include

1. *The costs of the hearing on 6 August 2008;*
2. *Counsel's fees in amounts not exceeding double the amounts set out in the relevant tariff contained in Part IV of Annexure 2 to the Rules."* ***(My emphasis)***

j) In a recent full bench judgment in this division **Long Beach Homeowners Association v MEC: Economic Development, Environmental Affairs and Tourism (Eastern Cape) and Others**[26] Pickering J held as follows:

"[45] The learned Judge did not deal, however, in her judgment with any of the submissions made for or against an award of the costs of two counsel, merely ordering that the application be dismissed with costs. We were informed that she gave no reasons for granting applicant leave to appeal her judgment nor did she do so in granting first respondent leave to appeal the costs order. Her failure to have given any such reasons and to elucidate the basis upon which she made her costs order is, with respect, most regrettable as this Court is now in the dark as to whether in granting the costs of only one counsel ***she had overlooked the first respondent's submissions that the costs of two counsel were justified or whether she had been of the view that in fact they were not.***

[26] (CA316/2017) [2018] ZAECGHC 26 (29 March 2018) at paragraphs 45 and 46; [2018] JOL 39811 (ECG)

[46]… In my view, however, where the learned Judge ***gave no reasons for her order*** *either in her main judgment or in the application granting leave to appeal it* ***cannot be assumed that she exercised a judicial discretion in this regard****. In my view, in the absence of such reasons this court is at large* ***to consider the issue of costs afresh." (My emphasis)***

4. Issues to be determined in this matter are:

   a) Whether or not the Magistrate was correct in granting rescission in the context of its relevance in the making of the costs order.
   b) Whether or not the circumstances of this case warrant the interference with the discretionary exercise of the court's power in making the costs order it did.

5. Rescission
   a) The Magistrate was alive to the applicable law and the test in determining whether or not to grant rescission.
   b) The Magistrate seems to have accepted that the reason for the delay was the failure of his legal representative to act timeously after the Respondent had taken prompt action to instruct his representative to defend the action. The Respondent's actions were not aimed at being purely dilatory as he had initially acted promptly.
   c) The Respondent was indeed remiss in not following up but that did not make him mala fides nor was he in wilful default.
   d) The Magistrate's finding in this regard cannot be faulted.
   e) The learned Magistrate took due cognisance of all the relevant factors necessary in arriving at his decision to grant rescission including the issue of *bona fides*.

f) There exists no basis to find that he was incorrect in granting the Respondent the indulgence sought by rescinding the judgment having regard to, *inter alia*, the test as enunciated by Brooks J in *Mabusela's* case.

g) The learned Magistrate appears to have exercised his discretion properly in granting rescission.

6. COSTS

a) The learned Magistrate stated the reason why he did not find that a punitive cost order was warranted. He accordingly exercised his discretion in this regard and this part of his order cannot be interfered with having regard to the applicable tests on appeal as enunciated in the authorities cited above.

b) He however failed to state why despite finding that the Appellant had incurred costs in obtaining the default judgment, he failed to award him such costs.

c) He failed to take into account that the Appellant had also incurred execution costs.

d) He failed to state why he was not granting the Appellant at least double the costs of counsel.

e) He failed to state why he did not deem it appropriate to order the costs to be taxed and payable immediately.

f) This court is accordingly at liberty to consider the issue of costs afresh having regard to the *dicta* of Pickering J in the Long Beach matter cited above.

g) In considering the issue of costs afresh the following factors have inter alia been considered:-

(i) That the Appellant through no fault of his own incurred costs in obtaining the default judgment and the attendant wasted costs of execution.

(ii) That both parties had counsel.

(iii) That the matter did give rise to issues of law which made the involvement of counsel reasonable in the circumstances.

(iv) That the lower tariff applicable to advocates makes the granting of counsel's costs at twice the tariff just and reasonable in the circumstances having regard to the *dicta* of Kroon J in *Brand's* case at paragraphs 20 – 28.

(v) The issue of when these costs should be taxed and payable is dealt with in *Rule 33 (3)* of the *Magistrate's Court Act.*

a) *Rule 33 (3)* reads as follows:

"Unless the court shall for ***good cause*** *otherwise order, costs of interim orders* ***shall not be taxed until the conclusion of the action****, and a party may present only one bill for taxation up to and including the judgment or other conclusion of the action."*

b) The object of the sub-rule is:

"... die verhindering van kwelling van 'n party met eksekusie van tussentydse kostebevele[27]*..."*

In terms of this subrule the costs in connection with interim order may not be taxed separately, they must be claimed as part of the total costs on the conclusion of the action[28].

c) In *Thabo Mofutsanyana District Municipality v Badenhorst*[29] Ebrahim J dealt with circumstances under which such an order would be made.

[27] *Du Preez v Mostart 1981 (2) SA 515 (G) at 519 H*

[28] Van Tonder v Meyer 1980 (4) SA 1 (T) at 3

[29] (A114/2012) [2013] ZAFSHC 138 (8 August 2013) at pages 8 - 16

d) In this matter the case is unlikely to be long nor is it complicated enough to warrant such an order.

e) The trial matter can be set down quickly and the matter dealt with to finality fairly quickly within a few days.

f) The Appellant has failed to persuasively demonstrate good cause as to why such costs should be taxed and payable immediately having regard to the arguments preferred in this regard.

g) I am accordingly of the view that an order that costs be taxed and payable immediately is not warranted in the circumstances of this case as the basis therefore has not been established by the Appellant.

(vi) The following order is accordingly made:-

a) That the appeal is upheld with costs,

b) That the cost order of the Magistrate is set aside and replaced with the following order:-

(i) That the Applicant is ordered to pay the opposed costs of the Application, such costs to include counsel's fees in amounts not exceeding double the amounts set out in the relevant tariff contained in Part IV annexure two of the Rules.

(ii) That the Applicant is ordered to pay the party and party costs arising from the default judgement proceedings and the execution steps taken (the wasted costs), and in the event that counsel appeared at the Default Judgment heaving such costs to be at double the relevant tariff.

_____

DAWOOD J

JUDGE OF THE HIGH COURT

I agree:

_____

JAJI J

JUDGE OF THE HIGH COURT

Counsel for the applicant	:	MR R. T. MARAIS
	:	
Counsel for the respondent	:	MR R. D. CROMPTON
	:	