

REPUBLIC OF SOUTH AFRICA




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

- (1) REPORTABLE: ~~YES~~/NO
(2) OF INTEREST TO OTHER JUDGES: ~~YES~~/NO
(3) REVISED.

30/06/2022

DATE



SIGNATURE

Case no. 2021/9853

In the matter between:

MANEBO NANEDO ALEX

Applicant

And

MINISTER OF HOME AFFAIRS

1ST Respondent

DIRECTOR GENERAL HOME AFFAIRS

2ND Respondent

Coram:

Dlamini J

Date of hearing: 11 April 2022 – in a 'virtual Hearing' during a videoconference on Microsoft Teams digital platform.

Date of Judgment: 30 June 2022

This judgment is deemed to have been handed down electronically by circulation to the parties' representatives via email and shall be uploaded onto the caselines system.

JUDGMENT

DLAMINI J

- [1] This is an application for costs that relates to an urgent application which after agreement between the parties, it was removed from the urgent roll on 09 March 2021.
- [2] The Applicant is an Ethiopian national. He was arrested on 16 December 2020, where he was charged with the contravention of the immigration laws of the Republic of South Africa, and was accordingly transferred to the Lindela Repatriation Centre on 12 February 2021. His detention at Lindela was for purposes of deportation which did not occur and was eventually released on the 8 March 2021.
- [3] On 22 February 2021 the Applicant through his attorneys of record caused a letter to be sent to the Respondents calling for his release.
- [4] When no reply was forthcoming from the Respondents, on 26 February 2021, the Applicant then launched an urgent application that was set down for hearing on 9 March 2021.

- [5] On 5 March 2021, the Applicant's attorneys were informed via a telephone call and e-mail from the Respondent's legal representative that the Applicant was to be released from detention on even date, and they requested that the matter be removed from the roll.
- [6] On 8 March 2021, the Applicant's Attorney sent a letter to the Respondent's legal representative requesting confirmation whether the Applicant will be released before noon of the said day. This request was met by a reply from the Respondent's legal representative that their e-mail dated the 5 March 2021 should be sufficient proof that the Applicant will be released.
- [7] The Applicant's attorneys upon their own investigation discovered that the Applicant has not been released as undertaken by the Respondents.
- [8] On 8 March 2021, at around 16h00 pm, the Applicant's attorneys were informed by the Respondent's legal representative that the Applicant has been released from detention.
- [9] The Applicant's attorneys then requested the Respondents to tender costs of the application and the Respondents refused the tender indicating that such order as to costs should be determined and argued and ruled in court.
- [10] As a result, on 9 March 2021, the matter was removed from the roll by agreement between the parties and the costs were reserved.
- [11] The numb of the issue is whether the Applicant is entitled to the costs of the 9 March 2021 and the costs of this application.
- [12] The Applicant submits that this application should succeed and is justified by the Respondent's reprehensible conduct, which includes the failure to uphold its undertaking to release the Applicant by the 8 March 2021 before noon which compelled the Applicant to brief Counsel in the afternoon on the 8 March 2021.
- [13] Further that his detention was unlawful and the decision to be released was legal and correct, therefore the consequence of costs of this application shall follow.

- [14] Finally, the Applicant avers that the Respondent's conduct amounts to infringement, non-consideration and non-compliance of the fundamental rights of the Applicant. The conduct is *mala fide* and prejudicial, as such the Respondents are to pay the costs of this application.
- [15] In turn, the Respondents submits that the Applicant is not entitled to the costs order on the basis that on its letter dated the 22 February 2021, the Applicant did not put the Respondents to terms that should Respondents fail to release the Applicant, and an urgent application will be launched to seek his release. That the application was not opposed by the Respondents. Further that the Applicant was released on the 8 March 2021 as a result the matter was concluded and not worth referred to court and the issue of costs to be reserved.
- [16] The trite principle governing costs is well set out in **TEXA CO SA LTD V CAPE TOWN MUNICIPALITY**¹, which I endorse, where the court said “....costs are awarded to a successful party in order to indemnify him for the expense to which he has been put through having been unjustly compelled either to initiate or defend litigation, as the case maybe owing to the necessary operation of taxation, such award is seldom a complete indemnity but does not affect the principle on which it is based.”
- [17] It is a well-known principle of our law that the court has a discretion to decide on costs, however this discretion has to be exercised judiciously. See author A. Cilliers; Law of Costs issue 04 October 2021 d 2-7.
- [18] In my view the genesis of this matter stems from the unlawful detention of the Applicant by the Respondents on 16 December 2020. The detention was not only unlawful it was accompanied by the imminent deportation of the Applicant, thereby denying him his rights to apply for asylum as he had indicated his intention to do so. The Applicant through his legal representative acted reasonable and issued a letter of demand to the Respondents requesting his immediate release.

¹ 1926 AD 467 of 488

[19] There was neither an acknowledgement nor reply to the Applicant's letter aforesaid. With the prospect of deportation hanging over his head, the Applicant had no choice but to launch the urgent application.

[19] Furthermore, despite their undertaking, the Respondents failed to release the Applicant as they had undertaken. After the Applicant's eventual release, the Respondents failed to tender the costs to the Applicant to alleviate his costs. Instead the Respondents unjustifiably refused to tender the costs, forcing the Applicant to bring this present application for costs. I am satisfied that the Applicant has established his case and is entitled to the costs of the urgent application and the costs of this application.

[20] In all the circumstances I mentioned above, I make the following order:

- (i) The order that I signed on the 11 April 2022 is made an order of this Court.



DLAMINI J
JUDGE OF THE HIGH COURT OF SOUTH AFRICA

GAUTENG LOCAL DIVISION, JOHANNESBURG

handed down on: 30 June 2022
for the Applicants: SNETHEMBA VOB
Email: isaacvobi1@gmail.com
Instructed by: ONI ATTORNEYS

For the Respondents : JOHN MALEMA
Email: advocate.malema@gmail.com
Instructed by: The State Attorneys