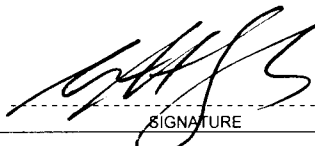


IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

18/05/2016

Case Number: 18771/13

DELETE WHICHEVER IS NOT APPLICABLE	
(1)	REPORTABLE: YES / NO. <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO
(2)	OF INTEREST TO OTHER JUDGES: YES / NO. <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO
(3)	REVISED. <input type="checkbox"/>
18/5/2016	
DATE	SIGNATURE

In the matter between:

HEIKO DRAHT N.O.

1st APPLICANT

MARC BRADLEY BEGINSEL N.O.

DONOVAN THEODORE MAJIEDT N.O.

DYNAMIC AUCTIONEERS CC

and

MBONGISENI ISAAC MANQELE

1ST RESPONDENT

LINDIWE GRACE MANQELE

2ND RESPONDENT

EKURHULENI METROPOLITAN
MUNICIPALITY

3rd RESPONDENT

Coram: HUGHES J

REASONS

HUGHES J

[1] This is an application for leave to appeal against the judgment handed down on 7 August 2015. Leave is sought by the first and second respondent in the main application, being the applicant's in this application.

[2] One of the reasons advanced in the applicants application papers is that they seek clarification of the costs orders which appear in the judgment. On the one hand in the body of the judgment at paragraph 21 the cost order reads that the costs awarded are on a party and party scale. Whilst in the order, at paragraph 22.3, costs are awarded on an attorney and client basis.

[3] In terms of Rule 42(1) of the Uniform Rules of Court a court may *mero motu* rescind or vary an order.

[4] In this instance it clear that a glaringly patent typographical error occurred when the order was being typed. In addressing the costs paragraph in the order itself this in fact falls in line with the scale of costs that was to appear in order. There is now clarity between paragraph 21 and 22.3.

[5] I am of the view that this is such a case that I can *mero motu* change paragraph 22.3 as regards the scale of costs to be applied as the sense and substance of the judgment is not altered.

[6] In the result the order at paragraph 22.3 will read that the scale of the costs is to be on party and party scale and not an attorney and clients scale.

[7] In the applicants application papers for leave to appeal for the first time in the proceedings does the applicant bring to the fore the argument that the applicants as suppliers and as such will be affected by Consumer Protection Act 68 of 2008(CPA) if leave to appeal is not granted.

[8] This argument of the CPA was not canvassed when I presided over the opposed eviction application which resulted in the judgment which the applicants seek to appeal.

[9] Those facts were never part of the argument and naturally did not form part of the judgment. The applicant's cannot seek to appeal that which was not considered, is on the record and is neither in the judgment.

[10] In the circumstances the reason advanced for leave to appeal to be granted with regards to the aspect of the CPA must be dismissed with costs.

[11] The following order is made:

[11.1] The words "*as between attorney and client*" which appear in paragraph 22.3 of the judgment are to be deleted and replaced with "*on a party and party scale*".

[11.2] The application for leave to appeal on the applicability of the Consumer Protection Act 68 of 2008 is dismissed with costs.



W HUGHES
JUDGE OF THE HIGH COURT, PRETORIA

For the 1st and 2nd Applicants: NCHUPETSANG ATTORNEYS
011-4923544

For the respondent: VELILE TINTO & ASSOCIATES
012-8073366