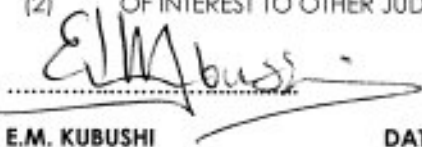




**IN THE HIGH COURT OF SOUTH AFRICA  
(GAUTENG DIVISION, PRETORIA)**

**Case Number: 405/2021**

(1)	REPORTABLE: NO
(2)	OF INTEREST TO OTHER JUDGES: NO
	
E.M. KUBUSHI	DATE: 26-01- 2021

In the matter between:

**ADELAIDE NTSAKO MOLATOLI**

**APPLICANT**

and

**MEDSHIELD MEDICAL SCHEME  
(Reg. No.: 1140)**

**FIRST RESPONDENT**

**COUNCIL FOR MEDICAL SCHEMES**

**SECOND RESPONDENT**

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**JUDGMENT**

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**KUBUSHI J,**

*This judgement is handed down electronically by circulating to the parties' representatives by email and by uploading on Caselines.*

[1] The issue before court today is only on the determination of costs which are sought against the first respondent.

[2] The applicant approached court on an urgent basis seeking an order to compel the respondents to provide and /or make available to her an investigation report that was compiled by Fundudzi Forensic Services which report allegedly implicated her in wrong doing.

[3] The first respondent opposed the application and filed an answering affidavit to which the applicant replied. It was only after the applicant had filed her replying affidavit that the first respondent provided the applicant with the report and requested that the applicant withdraw the application. The applicant agreed not to proceed with the application but she is insisting that she is entitled to the costs of the application on a punitive scale.

[4] The applicant having received that report, there is no longer any *lis* between the parties and thus no need for the applicant to proceed with the application in so far as the merits of the dispute are concerned. The applicant's submission is that she is entitled to the order of costs because despite request, the respondents refused to provide her with the report even though she was entitled thereto by virtue of being allegedly implicated in it, and, thus, had forced her hand to approach court as she did. The applicant contends that she was entitled to be provided with the report as soon as it was made available to the respondents.

[5] The first respondent contends that it should not be mulcted with costs because the applicant, although so informed, refused to formally request a copy of the report by submitting a request in terms of the Promotion of Access to Information Act 2 of 2000 ("PAIA"). The contention is that the applicant approached court without justification to rather issue out the present application after her remedy at law to access the report had been made

clear to her. The first respondent contends further that it simply provided the report to the applicant to avoid incurring unnecessary legal costs.

[6] I do not intend to go into the merits of whether or not the applicant should have formally applied for the report in terms of PAIA as the merits part of the application are no longer before me. Safe to say that if it was the first respondent's intention to avoid unnecessary litigation costs, it should have on being served with the application, immediately provided the applicant with the report. Instead it chose to oppose the application and even filed an answering affidavit which the applicant was obliged to reply to.

[7] On that basis I have to rule that the applicant is entitled to the costs of the application. This, however, should not be on a punitive scale as contended for by the applicant.

[8] Consequently, I make the following order:-

1. The application is removed from the roll.
2. The first respondent is ordered to pay the costs of the application.

A handwritten signature in black ink, appearing to read 'E.M. Kubushi', is written over a horizontal line.

**E.M KUBUSHI**

**JUDGE OF THE HIGH COURT  
GAUTENG DIVISION, PRETORIA**

Appearance:

Applicant's Representative : Mr C. Molatoli

Applicant's Attorneys : **Chabeli Molatoli Incorporated.**

First Respondent's Counsel : Adv. A.E. Ayaywe.

First Respondent's Attorneys : **Lawtons Incorporated, Trading as Lawtons  
Africa.**

Date of hearing : 26 January 2021

Date of judgment : 26 January 2021