




IN THE HIGH COURT OF SOUTH AFRICA

(GAUTENG DIVISION, PRETORIA)

DELETE WHICHEVER IS NOT APPLICABLE	
(1) REPORTABLE: YES / NO.	
(2) OF INTEREST TO OTHER JUDGES: YES / NO.	
<input checked="" type="checkbox"/> REVISED.	
11/1/2023 DATE	 SIGNATURE

Case Number: 25559/2022

In the matter between:

HARRISON HURSINEY PIENAAR

First Applicant

HEIDI JULIA PIENAAR

Second Applicant

and

NATHAN EDWIN SASSMAN

First Respondent

DESIREE ELIZABETH SASSMAN

Second Respondent

JUDGMENT ON COSTS ORDER

POTTERILL J

[1] I have received an affidavit opposing the proposed costs order. I have read same and taken note of its content.

[2] The factual and chronological history of the matter recording the conduct of the parties themselves, has no bearing on the costs order because the costs order is based on the conduct of the counsel, not the parties.

[3] Counsel admits that he made a grave mistake by insisting to pursue the costs order against the applicants' attorney on a *de bonis propriis* scale. This was not the only "mistake". Attacking the integrity of the attorney and using unbecoming language in the answering affidavit and the heads of argument was highlighted in the judgment. Surprisingly counsel still persists with this in paragraph 50 of the affidavit.

[4] Although counsel is not a party to the proceedings, costs can be granted against him if there was adherence to the *audi alteram partem* rule. In this matter there was. The judgment explained what counsel had to answer to and he was afforded an opportunity to do so. An award of costs against counsel is thus procedurally sound.¹

[5] The substantive reason for granting costs on a *de bonis propriis* scale against counsel is also sound. Such costs are granted when there is wilfulness or gross disregard for professional responsibilities or negligence of a serious degree. The basic notion is thus material departure from the responsibility of office and the actual parties to the litigation cannot be expected to bear the costs. However, in this matter an affidavit was filed by Mr Nathan Sassman (not his full names) wherein he asserts that

¹ *CB and Another v HB* [202] ZASCA 178 par [20]

"he gave the instructions to pursue the costs *de bonis propriis* against the Pienaars' legal team ..."

[6] What is alarming is that counsel seemingly still does not comprehend how unprofessional and defamatory his heads of argument were drafted. However, since I have it under oath from this client that it was counsel's instructions to persist with the *de bonis propriis* costs order against the attorney of the applicants, I will reconsider my order and it will read as follows:

"All costs occasioned by the opposition to the *de bonis propriis* costs order against the applicant's attorney are to be paid on attorney and client scale by the respondents."



S. POTTERILL
JUDGE OF THE HIGH COURT

CASE NO: 25559/2022

FOR THE APPLICANTS: ADV. M. JACOBS

INSTRUCTED BY: Klagsbruin Edelstein Bosman Du Plessis Inc.

FOR THE RESPONDENTS: ADV. M. KUFA

INSTRUCTED BY: Machaba Attorneys

DATE OF JUDGMENT: 11 September 2023