



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

CASE NO: 45637/2021

DELETE WHICHEVER IS NOT APPLICABLE

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

1/2/2023
DATE

In the matter between:

MPENTU MODIBA

Applicant

and

LYNDA TOUSSAINT

First Respondent

UNJANI CLINICS NPC

Second Respondent

JUDGMENT DELIVERED ON 1 FEBRUARY 2023

CP WESLEY AJ

1. In this application, which was dated 9 September 2021, the applicant sought an order compelling the respondents to make available to the applicant certain documents concerning certain business dealings that had transpired between them. Curiously, the founding papers do not disclose a legal right to the documents on the applicant's part. Had the application proceeded on the merits, it would in all probability have been dismissed.
2. The respondent's opposed the application on 6 October 2021. On 22 October 2022, and notwithstanding that the founding papers do not disclose a legal right to the documents on the applicant's part, the respondents furnished the applicant with the documents.
3. Over the ensuing nine months the parties quibbled about who was liable to pay the costs of the application. The dispute concerning liability for the costs of the application remained unresolved. This prompted the respondents to deliver an answering affidavit on 8 July 2022. On 10 August 2022 the applicant delivered a replying affidavit.
4. At the outset of the hearing the applicant objected to the late filing of the respondent's answering affidavit. In the exercise of my discretion, I grant condonation for the late filing of the answering affidavit. The reason for the

answering affidavit being filed late was satisfactorily explained and the applicant suffers no real prejudice if the affidavit is accepted into evidence.

5. The sole issue for determination is accordingly who should be liable to pay the costs of the application. Both parties argued with force that the other party was so liable.
6. It is trite law that the award of costs falls within the court's discretion. This discretion must be exercised judicially upon a consideration of all the facts, and is in essence a matter of fairness to both sides.
7. In my view, the overriding consideration concerning costs in this application is that the applicant had no right to the relief that she sought, but she nevertheless sought such relief; and the respondents had no duty to comply with the applicant's demand, but they nevertheless did comply. Ultimately, in my view fairness dictates that each party should pay their own costs.
8. In the result I make the following order:
 - 8.1 Each party shall pay their own costs in the application.



CP WESLEY

ACTING JUDGE OF THE HIGH COURT

GAUTENG DIVISION, PRETORIA

Appearances

Counsel for applicant: Adv P A Mabilo

Attorney for applicant: Marokane Attorneys

Counsel for respondents: Adv T Carstens

Attorney for respondents: Venter & Associates Inc

Date heard: 25 January 2023

Date of Judgment: 1 February 2023