



NOT REPORTABLE

CASE NO: SA 5/2017

IN THE SUPREME COURT OF NAMIBIA

In the matter between:

**FOUR THREE FIVE DEVELOPMENT
COMPANIES (PTY) LTD**

Appellant

and

**NAMIBIA AIRPORTS COMPANY
CHAIRPERSON OF THE NAMIBIA AIRPORTS
COMPANY TENDER COMMITTEE
MENZIES AVIATION NAMIBIA (PTY) LTD
OSHOTO LOUNGE SERVICES CC
BIDVEST NAMIBIA (PTY) LTD
FIRST NATIONAL BANK OF NAMIBIA**

First Respondent

Second Respondent

Third Respondent

Fourth Respondent

Fifth Respondent

Sixth Respondent

Coram: SHIVUTE CJ, CHOMBA AJA and FRANK AJA

Heard: IN CHAMBERS

Delivered: 30 July 2019

JUDGMENT IN RESPECT OF COSTS

FRANK AJA (SHIVUTE CJ and CHOMBA AJA concurring):

[1] When the matter was called there were three parties represented, namely; appellant (Four Three Five Development Companies (Pty) Ltd), first and second respondents (Namibia Airports Company and its chair) and the third respondent (Menzies Aviation Namibia (Pty) Ltd). On behalf of third respondent an objection was raised to the appeal being heard as it had lapsed due to the late filing of the record and seeing that there was no application to condone this non-compliance and to seek the re-instatement of the appeal.

[2] Legal practitioner for the appellant, when realising that the point taken on behalf of the third respondent was sound, sought a postponement of the matter based on the undertaking by him to 'immediately prepare' the necessary application to have the appeal re-instated. On this basis legal practitioner tendered wasted costs as the costs on appeal would be dealt with when the application for re-instatement is determined. The matter was then struck from the roll and with the undertaking on behalf of the appellant in mind the appellant was only ordered to pay the wasted costs of the day. This was on 8 November 2018.

[3] When the undertaking on behalf of the appellant to immediately lodge a re-instatement application had not materialised by May 2019 the third respondent brought this to the court's attention by way of a letter dated 23 May 2019 and sought

a change of the cost order and requested that the ordinary cost order which would have followed but for the undertaking on behalf of the appellant be made.

[4] Legal practitioner for the appellant was invited to respond to the letter seeking the normal cost order and informed the court that by the time of his response (5 June 2019) he had received no instructions to bring a re-instatement application and conceded that the court is entitled to change the cost order so as to include 'the costs of the appeal'.

[5] In the result the order of 8 November 2018 is varied to make the normal order where a matter is struck from the roll to read as follows:

'The matter is struck from the roll with costs, such costs to include the costs of instructing legal practitioner and instructed legal practitioner (where used).'

FRANK AJA

SHIVUTE CJ

CHOMBA AJA

APPEARANCES

APPELLANT:

S Namandje

of Sisa Namandje & Co Inc., Windhoek

FIRST and SECOND

N Marcus

RESPONDENTS:

Of Nixon Marcus Public Law Office, Windhoek

THIRD RESPONDENT:

J A N Strydom

Instructed by De Klerk, Horn & Coetzee Inc.,

Windhoek