



NOT REPORTABLE

CASE NO: SA 54/2017

IN THE SUPREME COURT OF NAMIBIA

In the matter between:

**GOVERNMENT OF THE REPUBLIC OF NAMIBIA
(MINISTRY OF SAFETY AND SECURITY)**

Appellant

and

BENHARDT LAZARUS

Respondent

Coram: SHIVUTE CJ, HOFF JA and FRANK AJA

Heard: IN CHAMBERS

Delivered: 6 April 2022

Summary: This court issued a cost order on 9 September 2021, however it made no cost order in respect of the costs on appeal. The parties were invited to submit supplementary heads of argument to deal with the costs on appeal only.

Held that appellant was substantially unsuccessful on appeal in this court.

Held that officers Nghilinganye and Kokule were not parties to this appeal and cannot be mulcted in costs on appeal.

Held that there should be no departure from the normal rule that costs must follow the result.

JUDGMENT IN RESPECT OF COSTS

HOFF JA (SHIVUTE CJ and FRANK AJA concurring):

[1] This court in this appeal matter issued the following cost order on 9 September 2021:

‘The appellant pays the legal costs of respondent to include the costs of one instructing and one instructed legal practitioner, subject to the following *proviso*:

“that the police officers Nghilinganye and Kokule succeed in persuading the court *a quo* not to order that costs should personally be paid, jointly and severally in the event that they appear before the court *a quo* as ordered.”

[2] From the context in which the order was made it is clear that it was intended to have effect in the court *a quo* and not in this court. This court thus made no cost order in respect of costs of the appeal.

[3] The parties were subsequently invited on 15 November 2021, through the office of the registrar, to file supplementary heads of argument dealing with the costs on appeal. We have received their supplementary heads of argument and are grateful.

[4] In order to clarify the aforesaid cost order, it must be stated that the intention of this court was to confirm the cost order *de bonis propriis* of the court *a quo*. In context, at the stage when this court gave the aforementioned cost order, it was oblivious to the fact that the court *a quo* had already on 22 November 2017 issued a final cost order against aforesaid officers – that they should bear the costs of the action personally. This development was not brought to our attention nor was it apparent from the record. In the result, the cost order of the court *a quo* in this regard should be left undisturbed.

Costs on appeal

[5] The appellant in its appeal was successful in respect of only one of the three claims against it. In monetary terms this led to a reduction in the award to the respondent of less than a fifth of the total award. In my view the appellant was thus substantially unsuccessful on appeal in this court. The aforementioned officers are not parties to the appeal and cannot be mulcted in costs on appeal. The litigation in the present matter was against the appellant, and it was the appellant who pursued the appeal in this court. In my view, there should be no departure from the normal rule that costs must follow the result. The appellant having substantially failed it should bear the costs of the appeal.

[6] In the result, the following order is made:

The appellant should bear the costs of this appeal, including the costs of one instructing and one instructed legal practitioner.

HOFF JA

SHIVUTE CJ

FRANK AJA

APPEARANCES

APPELLANT:

J Ncube

Of Government Attorney

RESPONDENT:

G Narib

Instructed by Shikale & Associates