



REPORTABLE

CASE NO: SA 2/2022

IN THE SUPREME COURT OF NAMIBIA

In the matter between:

PHILLIP MÜLLER

First Appellant

BRIGITTA MÜLLER

Second Appellant

and

JEAN-MARIE LAUER

Respondent

Coram: SHIVUTE CJ, DAMASEB DCJ and HOFF JA

Released: 25 July 2024

CORRECTION OF APPEAL JUDGMENT

DAMASEB DCJ (SHIVUTE CJ and HOFF JA concurring):

Introduction

[1] This corrective judgment is a sequel to this Court's judgment handed down on 14 June 2024.¹ The judgment upheld the appeal in part in favour of the appellants and against the respondent.

[2] In a letter dated 10 July 2024 received at the Court's Registry on 12 July 2024 and copied to the respondent (cross-appellant) the legal practitioner of record for the appellants addressed a letter to the Chief Justice seeking a correction of the order of the judgment by adding a costs order in favour of the appellants in respect of claim one.

[3] As a superior court of record, this Court has inherent jurisdiction under Art 78(4) of the Namibian Constitution which includes the power to correct a patent error or omission which does not reflect the true intention of the Court.

[4] The conclusion on the merits with regards to claim one necessitated a favourable costs order for the appellants. The non-inclusion of a costs order in favour of the main appellants is an obvious omission. There is no basis apparent from the judgment that it was our intention to deny the appellants costs in respect of their successful appeal, especially when one has regard to the fact that the respondent was awarded costs for his success in resisting the appeal in respect of claim three.

[5] The non-inclusion of a costs order in the judgment, against the respondent in favour of the successful appellants on claim one, is an obvious omission, which stands to be corrected.

¹ *Muller & another v Lauer* (SA 2-2022) [2024] NASC (14 June 2024).

[6] The error made in the executive part of the judgment should therefore be corrected to reflect the true intention of the court that costs are to be awarded to the appellants for achieving success in respect of claim one.

Order

[7] In the result, an additional paragraph is hereby added to the executive part of the judgment to read as follows:

'3. The appeal against the High Court's order in respect of claim one (enrichment claim) is upheld, with costs, consequent upon the employment of one instructing and one instructed counsel.'

DAMASEB DCJ

SHIVUTE CJ

HOFF JA

APPEARANCES

APPELLANTS:

R Heathcote

Instructed by Francois Erasmus and
Partners

RESPONDENT:

CJ Mouton

Instructed by Theunissen, Louw and
Partners