

IN THE HIGH COURT OF LESOTHO

In the matter between:

'MAMOTSAMAI MOTHEPU (duly assisted)

Applicant

and

THE PRINCIPAL SECRETARY (Ministry of Finance)
THE ATTORNEY GENERAL

1st Respondent
2nd Respondent

For the Applicant : Mr. Putsoane

For the Respondents : Mr. Masoabi

Reasons for Judgment on Costs

Delivered by the Honourable Mr. Justice T. Monapathi
on the 14th day of June 2002

There was a short argument over award of the costs of the application. Award of costs is generally in the discretion of the Court.

The matter had been settled in all except the issue of costs. Mr. Putsoane for Applicant sought for an order for costs on an Attorney and Client Scale as claimed in the notice of motion. The claimed award of costs was opposed by

Mr. Masoabi.

The Court decided that costs on the ordinary scale should be paid by Respondents. There had been no good reason why costs should be paid on a scale higher than the ordinary scale. There was no exceptional circumstances or conduct on the part of the Respondents which required that costs should be paid on a higher or punitive scale. See generally **The Civil Practice of the Supreme Court of South Africa**, Van Winsen et al, 4th Edition, Chapter 36.

This amicable settlement which was reached by the parties in effect allowed Applicant's claim. It effectively meant that Applicant has succeeded in her claim. There was no reason why the principle that costs follow the event and that the successful party gets his costs should be departed from. See **The Civil Practice of the Supreme Court of South Africa** (supra) page 704-705, "A,B(1)".

Even if I was required to make my decision on material available to me I need not have resorted to any further or extraneous evidence but to look at the material before me. (See **Gans v Society For The Prevention of Cruelty To Animals** 1962(4) SA 543 AD at 545 G-H) The material is the facts and legal propositions made in the papers before me.

The material before me shows that the Applicant who worked at the Department of Customs and Excise, had been interdicted and was on half-pay since the 31st May 1996. Excepting for pray 4 below Applicant's affidavit showed that she was entitled to an order of Court in the following terms:

- “ 1. Declaring the interdiction of the Applicant issued on the 10th January 1996 to have lapsed, and to be of no legal force or effect.
2. Directing 1st Respondent to pay Applicant's outstanding monthly salaries from the date of interdiction to the date of judgment.
3. Delay Applicant's suspension with effect from 31st May 1996 to be invalid and without legal force or effect.
4. That 1st Respondent pay costs herein on attorney and client scale.
5.”


The delay in discharging the dispute would demonstrate an unconscionable and callous disregard of Applicant's rights and lack of fair play. It was not because the Respondents were being let off the hook for the extreme delay in dealing with Applicant's disciplinary matter. Unfortunately it is a common occurrence.

This was deplorable enough. I however need not have to award a special order for costs.

Not that I gave no thought to the prejudice that Applicant said she suffered as a result. Nor should there have been an explanation why Applicant did not approach the Courts when her obvious plight was continuing for such a long time. The matter had been amicably settled.

There was however nothing in the conduct of the litigation that persuaded me to order costs on a higher scale against the Respondents . Respondents resolved that the matter be settled. That was useful and desirable.

I awarded costs to the Applicant on the ordinary scale on the 27th May 2002.



T. Monapathi
Judge

14th June 2002