IN THE COURT OF APPEAL OF LESOTHO

Held at Maseru

C of A (CIV) NO. 06/2017

In the matter between:

HIPPO TRANSPORT (PTY) LTD **APPELLANT**

And

THE COMMISIONER OF CUSTOMS & EXCISE **1ST RESPONDENT**

THE LESOTHO REVENUE AUTHORITY **2ND RESPONDENT**

CORAM : DR. K. E. MOSITO P
DR P. MUSONDA AJA
N.T. MTSHIYA AJA

HEARD : 26 November 2018

DELIVERED : 07 December 2018

SUMMARY

Civil Procedure - Jurisdiction – The applicant bringing an application in the Court of Appeal for an order reviewing a judgment of the Court of Appeal – Jurisdiction of the Court of Appeal to review its own judgments – Section 123 (4) of the Constitution - Meaning and common law powers of a Superior Court of Record - Each party to bear its own costs.

JUDGMENT

DR. K. E. MOSITO P

BACKGROUND

[1] This is an application for an order in the following terms:-

> *1.* The order granted by this Honourable Court on the 28th day of October 2015 be reviewed corrected and set aside.
>
> 2. That Applicant's vehicle be released to its authorized agents in the event of the grant of prayer 1 above.
>
> 3. That costs be awarded in the attorney and client scale only in the event of opposition to the present matter.
>
> 4. Any further and or alternative relief as the court may deem fit under the circumstances.

[2] The applicant justifies its approaching this court in the manner it did by deposing that, it was discovered after delivery of judgment that relevant matters which were never placed before court but in respect of which a wrong conclusion of fact was made were subsequently discovered after delivery of judgment the judgment. The Respondents reacted in 1.3 of the answering affidavit as follows:

> Since the bulk of the Applicant's affidavit raises issues of law, I advisedly refrain from responding to the merits of the Applicant's application and stand and fall by the points in limine I have raised above. The rest of all other issues of law contained in Applicant's Affidavit will be dealt with in argument at the hearing of this matter.

[3] As Mr Rasekoai, counsel for the applicant put it '*I*t must be stated from the onset that the application before the court is not a "*fun of the mill case*" which has ever happened before this Honourable Court. At first glance, it comes across as a vexatious

litigation which runs against the sacrosanct principles to the effect that there must be finality to litigation and further that this Honourable Court is the last port of call. This perhaps explains the reason why the Respondents seem to have pinned their colours to the most waiving their right to respond to the merits but restricting themselves to the points of law in limine.'

THE ISSUE

[4] The issue raised in this application is whether this Court has jurisdiction to review its own previous decisions or judgments. If the answer is in the affirmative, the applicant then requests this Court to review its previous decision in the ***Commissioner of Customs and Excise and Another vs Hippo Transport (Pty) Ltd C of A (CIV) 35/2016***.

THE FACTUAL BACKGROUND

[5] The case of The Commissioner of Customs and Excise and Another vs Hippo Transport (Pty) Ltd C of A (CIV) 35/2016 involved an appeal against a judgment of the High Court which issued orders to the following effect-

> The continued detention of the Applicant's truck and trailer (hereinafter collectively referred to as 'the truck') by the first respondent was declared to be purposeless and unlawful.
>
> * The first respondent was directed to release the truck to the Applicant.
>
> * The respondents were prohibited from declaring the truck to be forfeited.
>
> * Cost of the suit were awarded to the applicant.

[6] The orders were issued in an application which the applicant in this court had brought in the court below to secure the release of its truck which had been detained by the first respondents in

terms of the ***Customs and Excise Act 1982***. It is clear from the papers filed in the application that the facts which gave rise to the detention of the truck were in dispute.

[7] What was not in dispute was that on the 27th of April 2011 the applicant's truck carrying a load of 24 cattle arrived from South Africa at the Lesotho border post of Caledonspoort. At the time a ban imposed by the Ministry of Agriculture and Food Security prohibiting the importation of live sheep, cattle, goats and camels from South Africa due to an outbreak of Rift Valley fever and Foot-and Mouth disease in South Africa was in force. The founding affidavit was made by Isaac Monokoane, (Monokoane) a director of the respondent. He simply stated that: "I was informed that the cattle could not be allowed entry into Lesotho due to the outbreak of foot and mouth disease in South Africa. I drove the truck back." Much more information as to what occurred at the border post was provided in affidavits filed in opposition to the application by police officers and an official of the Ministry of Agriculture and Food Security ('the Ministry') who were on duty at the border post on the 27th of April 2011.

[8] It is common cause that the deponent to the founding affidavit in the High Court application, Monokoane, was charged in the Butha Buthe magistrate's court with contraventions were said to have occurred at the border post on the 27th of April 2011, namely:

* Contravening sections of the Value Added Tax Act in that he imported into Lesotho cattle and failed to pay value added tax based on the taxable value of the cattle.

* Contravening sections of the Customs and Excise Act in that he imported into Lesotho cattle which were at the time prohibited from entering the country, alternatively, that he imported the cattle without having a permit for the importation.

[9] At the conclusion of the crown case Mr Monokoane was found not guilty and discharged. The case for the applicant in the proceedings below in ***Commissioner of Customs and Excise and Another vs Hippo Transport (Pty) Ltd C of A (CIV) 35/2016***. Was in the main that following the acquittal of Monokoane, the detention of the vehicle, effected on the same facts which were canvassed in the magistrate's court, had become purposeless. The court *a quo* had found that in view of the acquittal verdict in the magistrate's court, there was no proof that the offences had been committed which meant that there was no basis on which an order for the forfeiture of the detained truck could be made. The judge had also found, on a consideration of the evidence contained in the affidavits, that there was no proof that the animals had been imported illegally into the country. It was against that background that the Commissioner of Customs and Excise appealed to this Court.

[10] Cleaver AJA (with whom Chinhengo and Griesel AJJA concurred), held that, although there was merit in all four grounds of appeal they did not consider it necessary to delve into the complexities of the issues raised in the first three grounds, for in

his view the fourth ground(The court erred and misdirected itself in finding as a matter of fact in motion proceedings and in circumstances where the respondent's allegations were disputed by the appellants, that the respondent's motor vehicle had not imported into Lesotho cattle in circumstances alleged by the appellants) was unanswerable. The appeal succeeded with costs and the order made in the High Court was set aside and replaced with the order that, "The application is dismissed with costs." This Court went on to order that, '[i]f the first appellant has not within 15 (fifteen) days from the date on which this judgment is delivered, seized, in terms of S(89) of the Customs and Excise Act No 10 0f 1982, the vehicles of the respondent currently being detained, being, **TRUCK: VIN WMAH32ZZ95-G17476, ENGINE NO35101750, REG MARK** and **NO CH 532** and **TRAILER: MAKE - ERF, VIN ST840015**, the respondent shall be entitled to apply on notice to the High Court to have the said vehicles released from the detention under the Customs and Excise Act.'

[11] It the orders outlined in paragraph [10] above that the applicant has now approached this Court for relief outlined in paragraph [1] above. In advance of considering the merits of the application, is apposite ate this stage to consider the law applicable to this application.

THE LAW

[12] Section 129 as the central provision, read with sections 128, 130 and 22 of the Constitution, establishes the jurisdiction of the

Court of Appeal, relative to all other courts and tribunals in the hierarchy of courts. Further, section 20 of the Court of Appeal Act,[1] has particular relevance with regard to the practical functioning of the Court. In considering whether the Court of Appeal has jurisdiction to review its own decisions, we have to bear in mind that, '[p]ublic policy requires that there should be an end to litigation in accordance with the doctrine of *res judicatae*. The object of this doctrine is to provide legal certainty, the finality of court decisions, the proper administration of justice as well as to further prevent endless litigation between the same parties over the same cause of action.'[2]

[13] We should also bear in mind, the remarks by Theron AJ delivering a unanimous judgment of the South African Constitutional Court that:

> 37. . . . . The rule of law and legal certainty will be compromised if the finality of a court order is in doubt and can be revisited in a substantive way. The administration of justice will also be adversely affected if parties are free to continuously approach courts on multiple occasions in the same matter. However, legitimacy and confidence in a legal system demands that an effective remedy be provided in situations where the interests of justice cry out for one. There can be no legitimacy in a legal system where final judgments, which would result in substantial hardship or injustice, are allowed to stand merely for the sake of rigidly adhering to the principle of res *judicatae*.[3]

[1] Section 20 of the Act of 1978.

[2] Siboniso Clement Dlamini NO v Phindile Ndzinisa and Others Case No: 67/2014 at para 5.

[3] *Thembekile Molaudzi v. The State* (2015) ZACC 20 at para 37.

[13] Also, Lord Woolf CJ, the Lordship Chief Justice of England and Wales in ***Taylor v. Lawrence***[4] had this to say:

> 55. . . . . The need to maintain confidence in the administration of justice makes it imperative that there should be a remedy. The need for an effective remedy in such a case may justify this court in taking the exceptional course of reopening proceedings which it has already heard and determined. What will be of the greatest importance is that it should be clearly established that a significant injustice has probably occurred and that there is no alternative effective remedy. The effect of reopening the appeal on others and the extent to which the complaining party is the author of his own misfortune will also be important considerations.

[14] His Lordship Adade JSC, delivering a judgment of the Ghana Supreme Court, held that the review jurisdiction is a special jurisdiction to be exercised in exceptional circumstances where fundamental and basic error may have inadvertently been committed by the court and causing a gross miscarriage of justice.[5] His Lordship Majahenkhaba Dlamini AJA delivering a unanimous judgment of the full bench of the Supreme Court of Swaziland had this to say with regard to the review jurisdiction of the Supreme Court in terms of section 148 (2) of the Constitution:

> (26). In its appellate jurisdiction the role of this Supreme Court is to prevent injustice arising from the normal operation of the adjudicative system; and, in its newly endowed review jurisdiction, this Court has the purpose of preventing or ameliorating injustice arising from the operation of the rules regulating finality in litigation whether or not attributable to its own adjudication as the Supreme Court. Either way, the ultimate purpose and role of this Court is to avoid in practical situations gross injustice to litigants in exceptional circumstances beyond ordinary adjudicative contemplation. This exceptional jurisdiction must, when properly employed, be conducive to and productive of a higher sense and

[4] Taylor v. Lawrence (2003) QB 528 (CA) at para 55.
[5] Mechanical Lloyd v. Narty (1987-88) 2 GLR 598.

> degree or quality of justice. Thus, faced with a situation of manifest injustice, irremediable by normal court processes, this Court cannot sit back or rest on its laurels and disclaim all responsibility on the argument that it is *functus officio* or that the matter is *res judicata* or that finality stops it from further intervention. Surely, the quest for superior justice among fallible beings is a never ending pursuit for our courts of justice, in particular, the apex court with the advantage of being the court of the last resort.
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> 27. It is true that a litigant should not ordinarily have a 'second bite at the cherry', in the sense of another opportunity of appeal or hearing as the court of last resort. The review jurisdiction must therefore be narrowly defined and be employed with due sensitivity if it is not to open a flood gate of reappraisal of cases otherwise *res judicata*. As such this review power is to be invoked in a rare and compelling or exceptional circumstance . . . . It is not review in the ordinary sense.[6]

[15] Section 123(1) of the Constitution of Lesotho provides that, '[t]here shall be for Lesotho a Court of Appeal which shall have such jurisdiction and powers as may be conferred on it by this Constitution or any other law.' Section 123 (4) of the Constitution further provides that, '[t]he Court of Appeal shall be a superior court of record and, save as otherwise provided by Parliament, shall have all the powers of such a court.' A superior court is a court of general competence which typically has unlimited jurisdiction with regard to civil and criminal legal cases. The term "superior court" has its origins in the English court system. A court of record envelops all such powers whose acts and proceedings are to be enrolled in a perpetual memorial and testimony.[7] Unlike a Court of limited jurisdiction, the superior court is entitled to determine for itself questions about its own

[6] President Street Properties (Pty) Ltd v. Maxwell Uchechukwu and Four Others Civil Appeal Case No. 11/2014 at para 26 and 27

[7] M.M. Thomas v. State of Kerala, (2000) 1 SCC 666.

jurisdiction.[8] Hence, if any apparent error is noticed by a "superior court" in respect of any orders passed by it the superior court has not only power, but a duty to correct it.[9] The power to review is inherent in courts of superior jurisdiction, but such power is limited to the legality of the administrative action or decision.

[16] Section129 provides for cases in which an appeal shall lie as of right to the Court of Appeal from decisions of the High Court. The source of the inherent powers is the judicial power that is vested in the judiciary by section 118 of the Constitution. That section provides that:

> (1) The judicial power shall be vested in the courts of Lesotho which shall consist of –
> (a) a Court of Appeal;
> (b) a High Court;
> (c) Subordinate Courts and Courts-martial;
> (d) such tribunals exercising a judicial function as may be established by Parliament.

[17] In ***Lepule v Lepule and Others***[10] this Court pointed out that, all courts in Lesotho, including the Court of Appeal, are creatures of legislation in that they have been established by the Constitution and the relevant legislation and they exercise their jurisdiction in terms of the law of the land. A close examination of the relevant sections of the Constitution and the relevant legislation makes no provision, whether expressly or by implication, for the Court of appeal to sit on appeal or review over

[8] Ravi S. Naik v. Union of India, (1994) Supp 2 SCC 641: AIR 1994 SC 1558.
[9] M.M. Thomas v. State of Kerala, (2000) 1 SCC 666 (672): AIR 2000 SC 540. [Constitution of India, Art. 215]. See also Delhi Judicial Service Assn. v. State of Gujarat, AIR 1991 SC 2176.
[10] Lepule v Lepule and Others (C of A (CIV) NO. 34/2014) para 75.

its own judgments.. Like apex courts in many known jurisdictions, the Court of Appeal in Lesotho is the court of last resort. The Court of Appeal thus sits as the apex court and therefore as an appeal and or review Court over all lower courts and tribunals in Lesotho's judicial hierarchy.[11] No Court can therefore sit on review or on appeal against its judgments. In other words, like apex courts the world over, it is the Court of last resort with regard to appeals and reviews. Therefore we conclude, once it has made a decision on an issue, that decision is final in that the issue is settled, based on the notion among others of the need for finality and certainty in the context of the rule of law.

[18] A "judicial" can be distinguished from an "administrative" tribunal by the fact that judgments and decrees of judicial tribunals are final and conclusive (subject only to appellate or judicial review).[12] Distinctive of any "judicial" decision is the rule that at some stage, which is dependent upon the jurisdiction and procedure of the particular tribunal and upon the particular case, the tribunal which makes it becomes *functus officio*. Even though some other tribunal may be able to review the decision on appeal or otherwise, the general rule is that the decision is final and conclusive so far as the tribunal which made it is concerned and that it cannot thereafter be reviewed by that tribunal. Thus, by virtue of section 129 of the Constitution of Lesotho, 1993, the Court of Appeal is the final court for a party to seek redress. As

[11] Ibid, at para 77.
[12] Xoia Co. (Austrulia) Pt3' Ltd. v. Conzmonwealth (1944) 69 C.L.R. 185.

Mokgoro AJA correctly pointed out in **Lepule v Lepule and Others(*supra*)**:

> [83] Based on its jurisdiction as the apex court, in the context of the principle of *stare decisis* and in view of the jurisprudential need for finality, certainty and the rule of law in any hierarchical court system, any matter dealt with and decided by an apex court, is of necessity final. It follows that a matter which has not been a subject of the final decision of the Court of Appeal, in that it was only *obiter dicta*, may indeed still be questioned in any court of law which has the jurisdiction to determine that matter and or issue. That is a basic principle of the common law doctrine of *stare decisis* in the context of *res judicata.*

[19] It is my view that when the Court of Appeal is the final court (apex court), it has the inherent jurisdiction or powers to review its own previous decision. No doubt that the Court of Appeal of Lesotho is not statutorily conferred with such jurisdiction or powers. An apex court must be armed with such inherent powers in order to correct obvious mistake and to do justice. However, in exercising such powers, it should not position itself as if it were hearing an appeal.

[20] The case clearly demonstrates that the power by an apex court to review its own previous decision may only be done in very exceptional circumstances. I find myself in respectful agreement with the remarks of the Court of Appeal of Malaysia (Review Jurisdiction)[13] that:

> …that one instance where the power to review may be exercised is when there is a corum failure. Another instance that I can think of is where the Court of Appeal has by mistake imposed a wrong

[13] Ahmadi Bin Yahya v Public Prosecutor Criminal Appeal No: P-06B-13-2007 in the Court of Appeal of Malaysia).

> sentence as provided by law. Example, if the law imposes a maximum sentence of 20 years imprisonment, but for a mistake the Sessions Court imposes 25 years imprisonment; and, this is subsequently affirmed by the High Court and Court of Appeal. In such a situation, another panel of the Court of Appeal, being the apex court can use its inherent powers to set aside the illegal sentence and impose the sentence that is appropriate as provided by the law. Of course there may be other instances but the exercise of such power depends on the facts and circumstances of each case (see Ramanathan s/o Chelliah v Public Prosecutor [2009] 6 MLJ 215). However, as said earlier, the power to review must not be treated as an appeal; otherwise, there will be no end to litigation.

[21] In line with the decision of this court in **Lepule v Lepule and Others(*supra*)**, I hold that this Court has jurisdiction to review its previous decisions. The said power derives from section 123 (4) read with section 118 of the Constitution.

[22] This court can only exercise its review power in exceptional circumstances. This court will view circumstances as exceptional only when gross injustice and or a patent error has occurred in the prior judgment. The power of this court to review its own decisions should therefore not be a disguised rehearing of the prior appeal. It is therefore not a disguised rehearing of the prior appeal, going over it with a fine comb for the re-determination of aspects of that judgment. It is therefore not done for purposes other than to correct a patent error and or grave injustice, realised only after the judgment had been handed down.

[23] There is another aspect to which this case requires us to turn, *viz*: whether the court has jurisdiction to set aside a final and definitive judgment, on the merits of the dispute between the parties, after evidence had been led. In ***Childerley Estate Stores***

v Standard Bank of SA Ltd,[14] De Villiers JP was primarily concerned with the Court's jurisdiction to set aside a final and definitive judgment, on the merits of the dispute between the parties, after evidence had been led. The issue in that case was whether the Court was empowered to set aside a final judgment on the ground that it was subsequently discovered that the judgment had been obtained as a result of fraudulent and false statements made by a witness during the course of the trial. Referring to a number of authorities, which had been quoted in support of the proposition that judgments could be set aside, under Roman-Dutch law, on the ground of *justus error*, De Villiers JP remarked at 166:

> We arrive at this position then that so far as *justus* error is concerned default judgments may in some cases be set aside under the Roman-Dutch law on the ground of *justus* error, and that judgments, whether by default or not, may be set aside in the seven exceptional cases above-mentioned on the ground of *instrumentum noviter repertum,* though evidently some of those cases are nowadays obsolete and inapplicable; there are, further, the exceptional cases of setting aside a judgment in a matrimonial suit on the ground of *justus* error… There may be other exceptional instances. …On the contrary it seems clear that Voet, in stating that judgments may be set aside on the ground of fraud, and (in exceptional cases) on the ground of *instrumentum noviter repertum* (42.1.28) intends impliedly to exclude any other grounds *ejusdem* generis for setting aside judgments delivered in defended cases after both parties have been heard and the action has been fought to a finish

[24] Thus, the Courts of Holland, appear to have had a relatively wide discretion in regard to the rescission of default judgments, and a distinction seems to have been drawn between the rescission

[14] Childerley Estate Stores v Standard Bank of SA Ltd 1924 OPD 163.

of default judgments, which had been granted without going into the merits of the dispute between the parties, and the rescission of final and definitive judgments, whether by default or not, after evidence had been adduced on the merits of the dispute.[15] In the former instance the Court enjoyed relatively wide powers of rescission, whereas in the latter event the Court was, generally speaking, regarded as being *functus officio*, and judgments could only be set aside on the limited grounds mentioned in the Childerley case(supra) and considered in **De Wet and Others v Western Bank**.[16]

[25] In the result I have come to the conclusion that the Courts do not have to take too rigid a view of the ambit of the Court's discretionary power to rescind default judgments. That being the position, it now becomes necessary for this Court to consider whether, having regard to all the circumstances of the case, including the applicant's explanation for the application, this is a proper case for the grant of indulgence.

CONSIDERATION OF THE MERITS OF THE APPLICATION

[26] I now turn to consider the merits of the application. The applicant applies for an order that, the order granted by this Court on the 28th day of October 2015 be reviewed corrected and set aside. That order provided as follows:

[15] Cf Athanassiou v Schultz 1956 (4) SA 357 (W) at 360G and Verkouteren v Savage 1918 AD 143 at 144.
[16] De Wet and Others v Western Bank Ltd 1979 (2) SA 1031 (A), p1040 – 1043.

(1) The appeal succeeds with costs.

(2) The order made in the High Court is set aside and replaced with the following order "The application is dismissed with costs"

(3) If the first appellant has not within 15 (fifteen) days from the date on which this judgment is delivered, seized, in terms of S(89) of the Customs and Excise Act No 10 0f 1982, the vehicles of the respondent currently being detained, being, **TRUCK: VIN WMAH32ZZ95-G17476, ENGINE NO35101750, REG MARK** and **NO CH 532** and **TRAILER: MAKE - ERF, VIN ST840015**, the respondent shall be entitled to apply on notice to the High Court to have the said vehicles released from the detention under the Customs and Excise Act.

[27] The applicant requests this Court to order that its vehicles be released to its authorized agents. I do not think that this is a proper case for exercising the discretion inherent in the common law powers of a superior court of record as discussed above. The reason for this view is that, this application is being made to this Court despite the fact that, the present applicant was given a remedy by this Court to apply to the High Court for relief as reflect in the order afore-quoted. This Court is not told why the applicant has not applied on notice to the High Court to have the said vehicles released from the detention under the Customs and Excise Act, which avenue is open to the applicant. When this alternative avenue was raised with the Learned Counsel for the parties at the hearing hereof, both Counsel ably accepted this route.

[28] In my view, bearing in mind that the review jurisdiction of this Court is a special jurisdiction to be exercised in exceptional circumstances where fundamental and basic error may have inadvertently been committed by this court, I am of the opinion that the justice of this case can be met by the applicant approaching the High Court to have the said vehicles released from

the detention under the Customs and Excise Act, which avenue is open to the applicant.

COSTS

[29] The applicant further prays that, costs of this application be awarded to it on attorney and client scale in the event of opposition hereof by the respondent. As Holmes JA correctly pointed out in ***Ward v Sulzer***,[17] in general, the basic relevant principles in regard to costs may be summarised as follows:

1. In awarding costs the Court has a discretion, to be exercised judicially upon a consideration of all the facts; and, as between the parties, in essence it is a matter of fairness to both sides. See Gelb v Hawkins, 1960 (3) SA 687 (AD) at p. 694A; and Graham v Odendaal, 1972 (2) SA 611 (AD) at p. 616. Ethical considerations may also enter into the exercise of the discretion; see Mahomed v Nagdee, 1952 (1) SA 410 (AD) at p. 420 in fin.
2. The same basic principles apply to costs on the attorney and client scale. For example, vexatious, unscrupulous, dilatory or mendacious conduct (this list is not exhaustive) on the part of an unsuccessful litigant may render it unfair for his harassed opponent to be out of pocket in the matter of his own attorney and client costs; see Nel v Waterberg Landbouers Ko-operatiewe Vereniging, 1946 AD 597 at p. 607, second paragraph. Moreover, in such cases the Court's hand is not shortened in the visitation of its displeasure; see Jewish Colonial Trust, Ltd. v Estate Nathan, 1940 AD 163 at p. 184, lines 1 - 3.
3. In appeals against costs the question is whether there was an improper exercise of judicial discretion, i.e., whether the award is vitiated by irregularity or misdirection or is disquietingly inappropriate. The Court will not interfere merely because it might have taken a different view.
4. An unsuccessful appeal against an order involving costs on the basis of attorney and client does not necessarily entitle the respondent to the costs of appeal on the same basis. A Court of appeal must guard against inhibiting a legitimate right of appeal, and it requires the existence of very special circumstances before awarding costs of appeal on an attorney and client basis; see Herold v Sinclair and Others, 1954 (2) SA 531 (AD) at p. 537. The decision also indicated the undesirability, in that case, of elaborating on the

[17] Ward v Sulzer 1973 (3) SA 701 (A) p.707.

> generality of the expression 'very special circumstances'. Without seeking to limit it, I think it safe to say that relevant considerations could include, amongst others, the degree of reprehensibility of the appellant's conduct, the amount at stake, and his prospects of success in noting an appeal, whether against the main order or against the special award of costs with its censorious implications.

[30] It remains to apply the foregoing principles to the facts of this case. On the one hand, the respondent was placed under a duty by this Court in ***The Commissioner of Customs & Excise and Another v Hippo Transport (Pty] Ltd***[18] to release the applicants' vehicles within 15 (fifteen) days from the date on which that judgment was delivered. That duty, the respondent did not comply with, thereby causing applicant to bring this application unnecessarily. On the other hand, applicant was ordered by this Court to apply on notice to the High Court to have the said vehicles released from the detention under the Customs and Excise Act, which avenue is open to the applicant. This applicant did not comply with that order. Reviewing all these considerations, in the exercise of a discretion I come to the conclusion, not without a measure of diffidence, there will be no order as to costs.

DISPOSITION

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

(a) The application is dismissed.

(b) Each party to bear its own costs.

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DR. K.E. MOSITO P.

[18] The Commissioner of Customs & Excise and Another v Hippo Transport (Pty] Ltd C of A (CIV) No 35/2016 .

PRESIDENT OF THE COURT OF APPEAL

I agree :

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DR P. MUSONDA AJA

ACTING JUSTICE OF APPEAL

I agree:

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N.T. MTSHIYA AJA

ACTING JUSTICE OF APPEAL

Counsel for the Applicant: Mr M. Rasekoai

Counsel for the Respondents: Adv. L. Mahao