

**IN THE HIGH COURT OF LESOTHO**

**HELD AT MASERU**

**CIV/APN/578/2010**

In the matter between:

**ECONET TELECOM LESOTHO (PTY) LTD**

**APPLICANT**

AND

**BREAKTHOUGH ENTERPRISES (PTY) LTD**

**RESPONDENT**

**RULING**

**Delivered by the Honourable Madam Justice L. Chaka-Makhooane on the 22<sup>nd</sup> February, 2011**

[1] This matter had earlier come to me by way of an urgent application on the 19<sup>th</sup> October, 2010. An Interim Order was granted to the Applicant, having heard **Mr. Mpaka** for the Applicant in the absence of the Respondent, inspite of proof of service.

[2] At the time of the application it appears that there already was a matter pending before an arbitration tribunal. Before this matter could be argued before the High Court, the arbitration process was over and an award was given.

[3] By consent the parties agreed that following the arbitration, it was no longer worthwhile to pursue the application before the High Court. The only issue left to be determined by me is that of costs of the application.

[4] The principle on costs is that they always follow the event and generally the successful party is entitled to a costs order. See **Unimark Distributors (Pty) Ltd v ERF 94 Silvertondale (Pty) Ltd 2003 (1) SA 204** at 215

It is also said that a trial judge in awarding costs exercises a judicial discretion upon a consideration of all circumstances which have a bearing on the issue of costs **Unimark Distributors** (supra) at 216. *In casu* the question that begs to

be answered is who, all things considered, should be awarded costs if any.

**[5]** By consent the parties agreed that the application had been overtaken by events following the arbitration process. The Applicant had initially obtained an Interim Order, which order was never finally argued. The order for costs in the Interim Order was that costs will be in the cause. As already mentioned the application was eventually abandoned. It seems to me that if this court was to exercise its discretion judicially an appropriate order for costs would be that each party must pay for its own costs.

It is so ordered.

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**L. CHAKA-MAKHOOANE**  
**JUDGE**

**For Applicant : Mr. Mpaka**  
**For Respondent: Ms Makhera**