

**IN THE HIGH COURT OF LESOTHO
(HELD AT MASERU)**

CIV/APN/245/2018

In the matter between:-

BKB LIMITED

APPLICANT

AND

**COMMISSIONER OF VALUE ADDED TAX
LESOTHO REVENUE AUTHORITY**

**1ST RESPONDENT
2ND RESPONDENT**

RULLING ON COSTS

CORAM : Honourable Justice Makara
HEARD : 6 June, 2019
DELIVERED: 6 June, 2019

MAKARA J.

[1] A determining factor in this case is that the Respondents agrees with the Applicant that the quantum of tax assessed by the 2nd respondent was not done in accordance with the procedure under section 28(5)(6) of VAT 2001. This is a procedural prerequisite before the 2nd Respondent reaches a final determination. To attest to this, the section provides;

Where an assessment has been made under this section, the Commissioner shall serve the notice of the assessment on the person assessed, which notice shall state-

- The value added tax payable;
- The date the value added tax is due and payable; and;
- The time, place and manner of objecting to the assessment. *(Court's emphasis)*

[2] As a result of the concession tendered by the Respondents on the procedural defects, the indication is that the assessment was

not arrived at in accordance with the procedural imperatives provided for in the section.

[3] The case assumed the new dimension when the Respondents belligerently maintained that notwithstanding their concession into the merits, they nevertheless, maintained that costs should not be awarded. A supportive reasoning which they vehemently held is that the fact that they have settled the matter in the merits, absolves them from being visited with costs.

[4] On the contrary, the Applicant vigorously counter-argued that it is entitled to the costs of the litigation because the Respondents took an unreasonably long time to ascertain their position and thereby causing it to perpetually remain under precarious circumstances. It accordingly complained that this compelled it to resort to the Court for judicial intervention. To highlight the picture, it explained that had the respondents agreed on a settlement earlier before this application was brought to the Court, it would not insist on costs being awarded against the Respondents.

[5] The Court appreciates that the Applicant was forced by the uncertainty of the Respondents whether or not they were intending to settle the matter. This is precisely what occasioned its decision to seek for justice in this Court and understandably, this has factual financial implications.

[6] In the premises, the Court determines that the applicant is entitled to costs.

E.F.M. MAKARA
JUDGE

For Applicants : **Adv. K.J. Selimo instructed by Sello Mafatle Attorneys**

For Respondents : **Adv. L. Mahao instructed by Mr. Dichaba Lesotho Revenue Authority**