

SUMMARY

REPORTABLE

CASE NO.: LC 19/2007

IN THE LABOUR COURT OF NAMIBIA

RUBETTA JOAN AGNES REILLY *versus* THE CLERK OF THE
DISTRICT LABOUR COURT, WAVIS BAY AND OTHERS

Heard on: 2009 January 30

Delivered on: 2009 February 11

PARKER, J

Statute -

Section 18 of the Legal Aid Act (Act No. 29 of 1990) – State not liable for costs in terms of – Court finding provisions are clear, unambiguous and plenary peremptory.

Held, 18 of Act 29 of 1990 contains provisions that

are plenary peremptory and therefore does not admit of any limitation or qualification.

Costs -

Object of explained – Court finding that in instant case applicant was granted legal aid in terms of Act 29 of 1990 – Consequently, Court deciding the applicant did not incur any expenses for which she may be indemnified.

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Held, applicant not entitled to award of costs in virtue of s 18 of Act No 29 of 1990.

REPORTABLE

CASE NO.: LC 19/2007

IN THE LABOUR COURT OF NAMIBIA

In the matter between:

RUBETTA JOAN AGNES Reilly

APPLICANT

and

**THE CLERK OF THE DISTRICT
LABOUR COURT, WAVIS BAY**

1ST RESPONDENT

**THE CHAIRPERSON OF THE
DISTRICT COURT OF DISTRICT**

WALVIS BAY

2ND RESPONDENT

NAMIBIAN PORTS AUTHORITY

3RD RESPONDENT

CORAM: **PARKER, J**

Heard on: 2009 January 30

Delivered on: 2009 February 11

JUDGMENT

PARKER, J

[1] In this matter the applicant brings an application by Notice of Motion praying for an order in the following terms:

- 1) Directing and compelling the first respondent to, within 10 days from date of service of this order, transmit the record in the hearing of the complaint under case number 130/2004 to the Registrar of the Labour Court, as well as two copies thereof, duly certified by the second respondent, together with the amplified reasons of the second respondent (if any) referred to in rule 18 (4) as contemplated in rule 19 (3) of the Rules of District Labour Courts.
- 2) Directing further that should the first respondent fail to transmit the record as referred to in paragraph 1 above, he/she should not be called upon to give reasons why he/she should not be held to be in contempt of this Court order and should consequently not receive a sentence (albeit) in the form of imprisonment or a fine or both.
- 3) Directing that the first respondent be held liable for the costs of this application *de bonis propriis*, alternatively directing and ordering any other party opposing the application to pay the costs thereof jointly and severally together with the first respondent, the one paying, the other to be absolved.
- 4) Further and/or alternative relief.

I observe here that there is no appearance for the 3rd respondent.

[2] At the commencement of the hearing of the application, Mr. Strydom, counsel for the applicant, informed the Court that the applicant had at long last received the aforementioned record (under Case No. 130/2004) last Tuesday, 27 January last. Counsel informed the Court further that he had it on authority that the record was typed on 3 August 2007, proof-read on 19 January 2008 and finally checked on 27 February 2008. Ms Katjipuka-Sibolile, counsel for the 1st and 2nd respondents, confirmed the completion of the works on those days. It was therefore inexplicable, Mr. Strydom submitted further, as I understood him, that the 1st respondent had to wait until 27 January this year to transmit the record to the applicant; that is, some 11 months after the record was ready. Mr. Strydom submitted that such conduct on the part of the 1st respondent was unacceptable and so, therefore, the 1st respondent must be mulcted in costs *de bonis propriis*.

[3] Thus, in virtue of the developments on 27 January 2009, Mr. Strydom submitted that the only issue left to be determined in the present application is the question of costs. On this point, too, Ms Katjipuka-Sibolile agreed with Mr. Strydom. Nevertheless, Ms Katjipuka-Sibolile argued contrariwise that no costs order should be made on the basis that the applicant had received legal aid from the State and so she had not incurred any costs for which she may be indemnified. In this regard, it must be remembered that, as a general rule, costs are awarded to a successful party in order to indemnify him or her

for the expense to which he or she has been put through having been unjustly compelled either to initiate or to defend litigation, as the case may be. (See *Texas Co (SA) Ltd v Cape Town Municipality* 1926 AD 467 at 488.) Besides, counsel submitted that the Court should decline to order costs in terms of s 20 of the repealed Labour Act, 1992 (Act No. 6 of 1992).

[4] It is my view that costs *de bonis propriis* is totally not only inappropriate, but it is also inapplicable, on the facts and circumstances of the present case. To start with, owing to staff turnover at the district labour court, Walvis Bay, the particular clerk of that court who should have transmitted the record to the registrar of this Court in terms of rule 19 (3) of Rules of District Labour Courts is no longer the clerk of that court. That much Mr. Strydom agrees. Accordingly, to mulct the present clerk of that court with costs *de bonis propriis* would be monumentally unjust and unfair; and I do not think anybody would deny that. That much, too, Mr. Strydom appeared to have appreciated.

[5] From the foregoing considerations and conclusions, the enquiry should be taken to the next level. The 1st and 2nd respondents have been cited *qua* agents of the State. Thus, it is the State, represented by the 1st and 2nd respondents, that has been cited in the present matter. For that reason, s 18 of the Legal Aid Act, 1990 (Act No. 29 of 1990) applies indubitably. Section 18 provides:

18. [(1)] No order as to costs shall be made against the State in or in connection with any proceedings in respect of which legal aid was granted and neither shall the State be liable for any costs awarded in any such

proceedings.

It must be mentioned in parentheses that s 18 has no subsections or subparagraphs and so the notation (1) is a typographical error and, therefore, it must be disregarded. In the instant case, the applicant was granted legal aid in the present proceedings in terms of the Legal Aid Act.

[6] For all the above reasons, and taking into account the clear and unambiguous words of s 18, which are formulated in plenary peremptory terms and therefore admitting of no limitation or qualification, s 18 destroys completely any argument that costs be awarded against the State, represented by the 1st and 2nd respondents. It follows that no costs order can or should be made against the State in the present matter.

[6] In the result, I make the following orders:

- 1) By agreement between the parties, the application as respects prayers (1) and (2) in the Notice of Motion is withdrawn.

I make no order as to costs.

Parker, J

ON BEHALF OF THE APPLICANT:

Instructed by:

Adv. JAN Strydom

Neves Legal

Practitioners

ON BEHALF OF THE FIRST AND

SECOND RESPONDENTS:

Instructed by:

Ms Katjipuka-Sibolile

The Government Attorney

ON BEHALF OF THE THIRD

RESPONDENT:

No appearance