

**NOT REPORTABLE**

**IN THE HIGH COURT OF SOUTH AFRICA  
(EASTERN CAPE LOCAL DIVISION, BHISHO)**

**Case No. 182/2021**

In the matter between:

**LOGOSLIVE (PTY) LTD  
(Registration No. 2017/383828/07)**

**Applicant**

and

**MEMBER OF THE EXECUTIVE AUTHORITY  
FOR TRANSPORT, EASTERN CAPE**

**Respondent**

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**JUDGMENT IN RESPECT OF COSTS**

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**HARTLE J**

[1] This matter came before me on the opposed roll to determine the issue of costs only.

[2] The history of the matter and the circumstances under which two prior reserved costs orders were granted are fully set out in Mr. Metu's heads of argument and do not bear repeating here.

[3] The application was settled on terms exactly as the applicant prayed for in the notice of motion.

[4] It is not clear why the respondent believed that she was not obliged to tender costs when the matter ultimately served before court on 25 March 2021 and the consent order aforesaid was made an order of court.

[5] No answering affidavit was ever put up, neither a notice in terms of rule 6 (5)(d)(iii) filed to suggest that there was a basis for the respondent to resist the issue of costs.

[6] During the course of case management, after the matter was enrolled for determination before me in respect of this aspect, I was indeed obliged to issue a directive in the absence of any answering papers, practice note or heads of argument having been filed by the respondent as is required in terms of the Uniform Rules of Court or Joint Rules of Practice calling upon her to file these by close of court on Monday, 2 August 2021 together with an appropriate application for condonation.

[7] In the directive I urged the respondent to indicate if she was still intent upon opposing the costs order sought against her alternatively encouraging her to reach agreement with the applicant regarding an appropriate consent order so that this court's time would not be wasted.

[8] Heads of argument were filed on 3 August 2021, but no application for condonation came forth.

[9] When I pointed out to Mr. Nabela, who appeared on the respondent's behalf in court when the matter was called, that I considered it particularly rude and inconvenient to all concerned that my directive had been ignored, he could offer no apology or excuse claiming that he had no instructions on which to premise a factual basis to prepare a condonation application.

[10] I was stupefied by this explanation and indeed by the gall of the respondent to raise in the heads of argument for the first time a submission that all the costs should be borne by the applicant on the basis that urgency was lacking when the application was launched.

[11] Mr. Nabela sought to persuade me (on the applicant's papers) that it had prematurely "jumped" to court, but the applicant's founding affidavit instead demonstrates a longstanding struggle to sort out an important issue on the payment in respect of a scholar transport contract that indeed should not have required a resort to court but became particularly pressing and urgent to vindicate in court for the reasons indicated in the founding affidavit. I am satisfied that a case of urgency was properly made out for the matter to have been entertained on such a basis.

[12] It is ironic to suggest that an extra-curial resolve of the matter might come when months later the respondent could not even be bothered to respect the authority of this court, let alone the expectation of the applicant to be compensated in terms of a valid contract or the rights of the learners to a secure, reliable scholar transport service.

[13] The bad faith of the respondent is further shown in the fact that whereas she initially proposed in settlement negotiations that each party pay own costs, she came to court to argue a submission that the applicant should pay her costs.

[14] In the result I have no hesitation in acceding to the applicant's request that costs be awarded on a punitive scale to mark the displeasure of this court both in respect of the respondent's conduct in finalizing the matter responsibly and in the conduct of her officials leading to the necessity to approach this court for relief in the first place.

[15] I issue the following order:

1. The respondent is liable to pay the costs of the application, including the reserved costs of 12 and 25 March 2021, on the scale of attorney and client.

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**B HARTLE**

**JUDGE OF THE HIGH COURT**

DATE OF HEARING: 5 August 2021

DATE OF JUDGMENT: 10 August 2021\*

\*Judgement delivered electronically to the parties by email on this date.

APPEARANCES:

*For the applicant: Mr. Metu instructed by Sotenjwa Attorneys care of Potelwa Attorneys, King William's Town (ref. NS/001/48).*

*For the respondent: Mr. Nabela instructed by the State Attorney, East London (ref. Ms Tyani).*