

**IN THE LAND CLAIMS COURT OF SOUTH AFRICA  
HELD AT RANDBURG**

**CASE NO: 123A/2014**

**Before: The Honourable Mpshe AJ**

**Heard on: ...22.04.15.....**

**Delivered on: ...26.05.15.....**

<b>DELETE WHICHEVER IS NOT APPLICABLE</b>	
(1) REPORTABLE: YES / NO	
(2) OF INTEREST TO OTHER JUDGES: YES / NO	
(3) REVISED: YES / NO	
..... DATE	..... SIGNATURE

In the matter between:

**THE COMMISSION ON RESTITUTION  
OF LAND RIGHTS, AND TWO OTHERS**

First Applicant

and

**KOEDERSRIVIER BOERDERY (PTY) LTD**  
[Registration No: 19961015253/07]

First Respondent

**AND SIX OTHERS**

In re:

**KOEDERSRIVIER BOERDERY (PTY) LTD**  
[Registration No: 19961015353/07]

First Applicant

**AND TWO OTHERS**

and

**THE COMMISSION ON RESTITUTION  
OF LAND RIGHTS, AND SIX OTHERS**

First Respondent

---

## **JUDGEMENT**

---

### **INTRODUCTION**

1. This is an application for costs allegedly incurred on 10 April 2015.

### **BACKGROUND**

2. The applicant is Koedoesrivier Boerdery (Pty) Ltd, a company duly registered in accordance with the company laws of the Republic of South Africa with registration numbers 1996/015352/07 and with principal place of business at Boekenhoutbult, Mooketsi.
3. The respondent is the Regional Land Claims Commissioner: Limpopo whose principal place of business is Kagiso House, cnr. Rissik and Schoeman Streets, Polokwane.
4. On 3 December 2014 the respondent initiated an application for leave to appeal against the whole of the judgement of this Court delivered on 24 November 2014.
5. The parties, after consultation between them agreed that the application be heard on 10 April 2015, and that respondent (applicant in the appeal application) would set the matter down. This was never done.

6. Applicant (respondent in the appeal application) attended court *ex abundanti cautela*. Respondent did not appear on 10 April 2015. It is the wasted costs of 10 April 2015 that applicant seeks.
7. This application was argued jointly with the application for leave to appeal. Respondents' submission is that applicants came to court knowing fully well that the matter was not set down. Applicants on the other hand contend that they were not sure as to what may happen in their absence.
8. Applicant filed a founding affidavit. The salient parts thereof read as follows:

*"3.7 There was no certainty at our office whether the matter will be set down for 09 April or 10 April 2015 and we therefore requested both Adv. Seneke and also the State Attorney (via this letter) to serve a notice of set down as soon as the date has been confirmed.*

*3.9 The only confirmation we did receive was an informal notice via e-mail from Adv. Seneke. As stated earlier it was agreed with the opposition that they will file a notice of set down for 10 April 2015.*

*3.10 No notice of set down was however received from the opposition.*

*3.15 Our instructing attorneys requested both Adv. Havenga SC and myself to attend to Court on 10 April 2015 *ex abundanti cautela* since the applicants' counsel were adamant that the matter would proceed.*

*5.2 The operative action to make sure that all parties are aware that the matter is continuing is therefore the notice of set down and the applicants failed to deliver same, but still insisted that the matter is to*

*be heard on 10 April 2015. We had no option but to attend in order to protect our client's rights if the Presiding Judge should decide to hear the matter even though there was no notice of set down."*

9. It is clear from the above that applicants attended court not because they were legally bound to do so but *ex abundanti cautela* and upon instruction by the applicants' instructing attorney.

10. Innes C. J. summed up the purpose of costs as follows:<sup>1</sup>

*"... costs are rewarded to a successful party in order to indemnify him for the expense to which he has been put through having been unjustly compelled either to initiate or to defend litigation, as the case may be. Owing to the necessary operation of taxation, such an award is seldom, a complete indemnity; but that does not affect the principle on which it is based".*

11. Rule 55(4) to rules of this Court states:

*"55(4) A notice of set down containing the time, date and venue or venues of any hearing, must be delivered by the applicant or plaintiff within ten days of being informed (at a conference or by the Registrar) of the date."*

12. Satchwell J states the following:<sup>2</sup>

*"A cost order is not intended to be compensation for a risk to which one has been exposed but a refund of expenses actually incurred".*

---

<sup>1</sup> Texas Co. (S.A.) Ltd v Cape Town Municipality 1926 AD 467 at 488

<sup>2</sup> Payem Components South Africa Ltd v Bovic Gaskets CC and Others 1999 (2) S. A. 409 at 417 D

13. In cause, applicants attended court to avoid the risk of the matter being argued in their absence. However, nothing, legally speaking, compelled them to attend court.
14. I find it difficult to award costs in this regard.
15. I order:
  - (a) Application for payment of wasted costs is dismissed.
  - (b) I make no order as to costs.

---

**M. J. MPSHE**

**Acting Judge in the Land Claims Court**