

**IN THE HIGH COURT OF SOUTH AFRICA
(EASTERN CAPE HIGH COURT – GRAHAMSTOWN)**

CASE NO: 483/2006

DATE HEARD: 03/03/2011

DATE DELIVERED: 04/03/2011

In the matter between:

PHUMZA VELELENI

APPLICANT

and

THE MINISTER OF SAFETY & SECURITY

RESPONDENT

JUDGMENT

REVELAS J

The applicant (the defendant in the main action) seeks an order directing the respondent (plaintiff in the main action) to pay the alleged wasted cost occasioned by the removal of the main action from the trial roll for 25 October 2010. The applicant also seeks a further costs order against the respondent in respect of his application. The application is opposed by the respondent.

Background

The respondent instituted action against the respondent for inter alia, unlawful arrest and detention and malicious prosecution. The arrest was effected in November 2003 and summons was issued on 14 February 2006. On 9 March

2007 the applicant raised a special plea of non-compliance with the provisions of section 3 (2) (a) of the Institution of Legal Proceedings against certain Organs of State Act 40 of 2002.

On 16 September 2010 the respondent filed her replication and also an application for condonation of her non-compliance with the aforesaid legislation. The application for condonation, which had become opposed was set down for hearing on 23 September 2010. The trial date had been set down for hearing at the respondent's behest and enrolled for 25 October 2010.

By agreement between the parties the condonation application was removed from the roll. On 22 September 2010 the attorneys for the parties met with Plasket J in chambers, as part of an initiative by Sangoni JP to streamline the roll. Some parties with impending cases on the roll for the fourth term were interviewed to ascertain whether those matters were proceeding or not. Because the application for condonation could not be proceeded with, neither could the trial. This was conveyed to Plasket J who noted that the trial would be removed from the roll. When the attorneys left the judge's chambers, no agreement had been reached by them on the wasted costs of removing the matter from the roll.

Quite plainly, the respondent was still obliged to file a notice of withdrawal. The reasons for the condonation application being postponed, was because the respondent had given the applicant too short notice to answer thereto. Contrary to what the respondent submitted, the applicant had every right to oppose the condonation application. Underlying this opposition is the respondent's tardiness at every turn during this litigation. Her aforesaid dilatory conduct is the only reason why the matter had to be removed from the trial roll.

Consequently, the respondent was not only obliged to file a notice of withdrawal, but she was also obliged to tender the wasted costs occasioned by the removal, which she did not do.

When the respondent ultimately filed her notice of removal from the roll at the eleventh hour (4 days before trial) she did not tender the costs thereof as she ought to have done.

Of course it must be mentioned that when the parties left the chambers of Plasket J, they knew with certainty that the trial would not proceed on 25 October 2010. This observation does not exempt the respondent from filing a notice of withdrawal, thereby avoiding to tender the wasted costs as it ought to do. The taxing master can be addressed on the costs incurred subsequent to 22 September 2010. It is not a subject I ought to engage in at this stage.

Ms Beard was correct in her assertion that if the respondent tendered costs on 22 September 2010, the application under consideration would not have been necessary.

Accordingly the following order is made:

1. The respondent is ordered to pay the wasted costs occasioned by the removal of the main action from the trial roll for 25 October 2010.
2. The respondent is further ordered to pay the costs of this application.

E. REVELAS

JUDGE OF THE HIGH COURT

APPEARANCES:

For the Applicant: Adv. Voultos, instructed by Mili Attorneys,
Grahamstown.

For the Respondent: Adv. Beard, instructed by Netteltons Attorneys,
Grahamstown.