


**IN THE HIGH COURT OF SOUTH AFRICA
(NORTH GAUTENG HIGH COURT)**

Case Number: 19066/09

DELETE WHICHEVER IS NOT APPLICABLE	
(1) REPORTABLE: YES <input checked="" type="radio"/> NO <input checked="" type="radio"/>	
(2) OF INTEREST TO OTHER JUDGES: YES <input checked="" type="radio"/> NO <input checked="" type="radio"/>	
(3) REVISED. <input checked="" type="checkbox"/>	
19/11/13	
DATE	SIGNATURE

19/11/2013

In the matter between:

MANTELLA TRADING 341 CC

PLAINTIFF

And

MARK BYRON THOMPSON N. O.

FIRST DEFENDANT

MICHELLE CECILLE THOMPSON N. O.

SECOND DEFENDANT

JUDGMENT

Fabricius J,

1.

Having allowed an amendment to Plaintiff's Particulars of Claim yesterday, and especially to prayer 1 thereto, Mr. Putter on behalf of Defendants, conceded this morning, after certain consultations, that the relevant old road, which is more precisely defined in my order, is in fact a public road.

2.

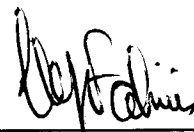
That brought the litigation to an end. I need to decide the question of costs. I was asked not to make an order in respect of any of the previous appearances.

3.

I was addressed on all relevant aspects in this context and the fact that I have a judicial discretion. I have taken into account the background as it appears from the pleadings and the pre-trial conferences, and also the judgment and order made in the urgent application in 2009. I note that usually the successful party is entitled to its costs. The lateness of the amendment is another factor. It is so also that Defendants in fact, withdrew their defences and did not proceed, for obvious reasons I think, with their conditional Counter-claims. I cannot however say that the defences or conditional Counter-claims were frivolous. Having considered the past history of this litigation and the late amendment, I deem it fair to both parties that I do not award all the costs to Plaintiff.

The following order is therefore made:

1. The road indicated on the amended compilation diagram marked “X” is declared to be a public road as defined in the Limpopo Roads Agency Act, *Act 7 of 1998*, with specific reference to points C to K.
2. Each party is to pay its own costs, except insofar as Defendants are ordered to pay the costs pertaining to its conditional Counter-claims, as well as the costs of the experts H. van der Merwe, H. Lessermann and A. Gerber, which would include the costs of any reasonable travel expenses.
3. Plaintiff is entitled to the costs of a Senior Counsel.



JUDGE H. J. FABRICIUS

JUDGE OF THE HIGH COURT

By Fabius J. "X"

