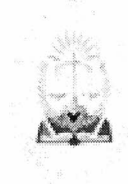
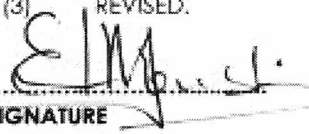


REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

Case NO: 48438/2016

(1)	REPORTABLE: NO
(2)	OF INTEREST TO OTHER JUDGES: NO
(3)	REVISED.
	
04 August 2020	
SIGNATURE	

In the matter between:

J K VORLAUFER & SONS (PTY) LTD

First Applicant

WALTER KARJOSELF VORLAUFER

Second Applicant

BARBARA ANNE VORLAUFER

Third Applicant

KAREN VORLAUFER

Fourth Applicant

and

MIKE HODGE

Respondent

JUDGMENT

KUBUSHI J

The judgment was handed down electronically by uploading on Caselines and by email to the respective parties.

[1] The respondent issued summons against the applicants in July 2016, claiming payment of certain sums of money relating to a Jaguar motor vehicle, which it was alleged the applicants failed to repair. The applicants excepted to the particulars of claim, raising several grounds of exception, which grounds related both to the complaint that the particulars of claim failed to disclose a cause of action and that they were vague and embarrassing.

[2] The exception was argued before me and on 04 December 2018. In all, twenty grounds of exception were argued. I handed down judgment on 30 April 2019, in terms of which only one ground of exception was upheld and the rest were dismissed. The respondent was granted leave to amend his particulars of claim relating to the one ground of exception upheld. It was further ordered that the applicants pay the costs of the exception.

[3] The applicants are aggrieved by this part of my order, that is, being mulcted with costs. They are now before me applying for leave to appeal this part of my order on the ground that my departure from the normal rule that costs follow the event is not warranted. On behalf of the applicants, it is contended that since the respondent was granted leave to amend its particulars of claim, it is the applicants who clearly achieved substantial success in the exception and ought to have been awarded the costs.

[4] The respondent is opposing the application for leave to appeal and seeks the dismissal thereof as well as an order in terms of which the applicants are ordered, jointly and severally, to pay the respondent's costs relating to the application for leave to appeal.

[5] The parties are in agreement that the application can be determined solely on the papers and that it is not necessary for oral argument to be presented. I, as a result, decided the matter on the arguments presented by the parties in their respective heads of argument uploaded on Caselines.

[6] In terms of s 17 (1) (a) of the Superior Courts Act, leave to appeal may only be granted where the Judge concerned is of the opinion that (i) the appeal would have a reasonable prospect of success; or (ii) there is some or other compelling reason why the appeal should be heard, including conflicting judgments on the matter under consideration.

[7] Having considered the arguments by the parties' counsel and the authorities I have been referred to, therein, I find myself not persuaded that another court might come to a different conclusion; or that there are compelling reasons why the matter should be heard on appeal.

[8] It is trite that a trial Judge has a wide discretion in awarding costs.¹ The discretion should be exercised judicially upon consideration of all facts, and as between the parties, it is in essence a matter of fairness to both sides.²

[9] In appeals against costs the question is whether there was an improper exercise of judicial discretion, that is, whether the award is vitiated by irregularity or misdirection or is disquietingly inappropriate. The court will not interfere merely because it might have taken a different view.

¹ *Ferreira v Levin, Vryenhoek v Powell* 1996 (2) SA 621 CC para 155.

² *Ward v Sulzer* 1973 (3) SA 701 AD at 706G - 707D.

[10] It is also trite that costs follow the event or, put differently, that the successful party is entitled to costs.³ In my judgment I did not depart from the rule that costs follow the successful party. As I shall indicate hereunder, the argument that the applicants were the successful party, bears no merit. I granted the cost in favour of the party who I considered to have been substantially successful, that is, the respondent.

[11] In granting the order for costs I exercised my discretion in favour of the respondent in that I found the respondent to be substantially successful and as such entitled to costs of suit. The applicants had raised about twenty grounds of exception with which I extensively dealt with in my judgment and upheld only one. It is in that sense that I came to the conclusion that the respondent has been substantially successful.

[12] As regards the appeal against costs only, it has been held that unless an applicant for leave to appeal against a cost order only can satisfy the trial court that an Appeal Court may reasonably find that exceptional circumstances exist, leave to appeal should be refused.⁴

[13] There were no exceptional circumstances proffered by the applicants either at the trial or in their application for leave to appeal. I could find none to exist. There is, therefore, no prospect that the applicants may be successful on appeal against the cost order only.


³ *Motala v The Master* 2019 (6) SA 68 SCA para 97; *Ferreirra v Levin, Vryenhoek v Powell* 1996 (2) SA 621 CC para 155.

⁴ *Logistics Technologies (Pty) Ltd v Coetzee* 1998 (3) SA 1071 WLD 10751.

[14] As is the general rule costs should follow the successful party. The respondent is thus entitled to be awarded costs of this application.

[15] Consequently, I make the following order -

1. The application for leave to appeal is dismissed.
2. The Applicants are ordered, jointly and severally, to pay the costs of the application.


E.M. KUBUSHI
JUDGE OF THE HIGH COURT

APPEARANCES:

Counsel for Applicants	: Adv E.J. Ferreira
Instructed by	: Barletts Incorporated c/o Savage Jooste & Adams
Counsel for Respondent	: Adv J.G Bergenthuin, SC
Instructed by	: Cilliers & Reyners Attorneys
Date heard	: 24 July 2020
Date of judgment	: 04 August 2020