

IN THE LABOUR COURT OF SOUTH AFRICA

HELD AT CAPE TOWN

NOT REPORTABLE

CASE NUMBER: C343/08

In the matter between:

WOUTERSE, JACQUELINE CHRISTINE

NICOLETTE

Applicant

and

INTERNATIONAL COLLEGES
GROUP (PTY) LTD

Respondent

JUDGEMENT

NGALWANA AJ

- [1] This is an application for leave to appeal against the judgement of this Court dated 5 December 2008. The grounds of appeal are essentially two-fold. The first is that the Court did not adopt a balanced approach

in determining the issue of condonation for the late filing of pleadings.

I have considered the respondent's submissions in this regard and remain un-persuaded. In my view, it is unlikely that another court may come to a different conclusion on the respondent's submissions.

[2] The second is that the Court erred in revisiting its earlier costs order and awarding a more punitive costs order against the respondent, when all it was called upon to do was furnish reasons for the order dismissing the condonation application. The applicant says this is a moot point because she agreed to recover costs only as originally ordered and not on the attorney and client scale.

[3] This second aspect raises a procedural issue as regards whether a Court may, in its discretion having considered a matter in greater detail since argument, deviate from its earlier costs order granted ex tempore and grant a different order when giving reasons for its decision on the merits. Notwithstanding the issue having become moot in this case, it is my respectful view that it is nonetheless an issue on which a higher Court ought to pronounce as it may come to a different conclusion. It seems to me with respect unpalatable and undesirable that a Court should shackle itself in an earlier judgement, given by it ex tempore, in the name of consistency (or such like) when it has

become wiser by the time it sits down to consider the reasons for it. Of course, the respondent's persistence in this point given its mootness may very well prejudice it in the event of the higher Court finding that nothing prevents a Court from deviating from an earlier ex tempore costs order when giving written reasons for its order on the merits.

[4] In the result, leave to appeal is granted only in relation to the second ground of appeal and refused in relation to the first.

[5] The respondent filed its application for leave to appeal late. It sought condonation for this. The applicant does not oppose the application. It is granted.

Ngalwana AJ

Appearances

For the applicant: *Mr GA Leslie*
Instructed by: *Justine Del Monte Attorneys*

For the respondent: *Mr B Guy*
Instructed by: *Maserumule Inc*

Date of hearing: *04 March 2009*

Date of judgment: *05 December 2008*