

DELETE WHICHEVER IS NOT APPLICABLE

(1) REPORTABLE: YES/NO. ☒ YES ☐ NO

(2) OF INTEREST TO OTHER JUDGES: YES/NO. ☒ YES ☐ NO

(3) REVISED. ☐

14/12/2022
DATE

[Signature]
SIGNATURE



**IN THE HIGH COURT OF SOUTH AFRICA
LIMPOPO DIVISION, THOHOYANDOU**

CASE NUMBER: 2016/2022

In the matter between:

MPHEPHU- RAMABULANA ROYAL FAMILY	APPLICANT
AND	
THE PREMIER LIMPOPO PROVINCE	1ST RESPONDENT
MEMBER OF EXECUTIVE COUNCIL, CO-OPERATIVE	
GOVERNANCE, HUMAN SETTLEMENTS AND T	
RADITIONAL AFFAIRS	2ND RESPONDENT
MINISTER OF CO-OPERATIVE GOVERNANCE AND	
TRADITIONAL AFFAIRS	3RD RESPONDENT
TONI PETER MPHEPHU-RAMABULANA	4TH RESPONDENT
MASINDI CLEMENTINE MPHEPHU	5TH RESPONDENT

VARIATION ORDER IN TERMS OF RULE 42(1) (b)

AML PHATUDI J

[1] This is a variation order envisaged in terms of Rule 42(1) (b) of the Uniform Rules of the High Court relating to the judgment I handed down electronically by circulation to the parties' legal representatives by email and publication through SAFLII on 13 December 2022.

[2] On 14 December 2022, the fifth respondent's attorney brought to my attention an error that slipped through in the order especially relating to costs. I find it inevitable to vary the costs order in terms of Rule 42 (1) (b) of the Uniform Rules of this court.

[3] The Rule provides that the court may, in addition to any other powers it may have, mero motu rescind or vary an order in which there is an ambiguity, or a patent error or omission, but only to the extent of such ambiguity, error or omission¹.

[4] I am mindful of an established principle in our law that once a court has duly pronounced a final judgment or order, it has itself no authority to correct, alter or supplement it. There are, however, few exceptions to that rule. The court may vary the order only to the extent of an error or omission committed in the order. Among other exception is that 'the court may correct a clerical, arithmetical or other error in its judgment or order so as to give effect to its true intention.'² (See *Firestone South Africa (Pty) LTD v Genticuro A.G.* 1977 (4) SA 298 at 307C-G)

¹ Rule 42 (1) The court may, in addition to any other powers it may have, *mero motu* or upon the application of any party affected, rescind or vary:

- (a) An order or judgment erroneously sought or erroneously granted in the absence of any party affected thereby;
- (b) an order or judgment in which there is an ambiguity, or a patent error or omission, but only to the extent of such ambiguity, error or omission;
- (c) an order or judgment granted as the result of a mistake common to the parties.

² *Firestone South Africa (Pty) LTD v Genticuro A.G.* 1977 (4) SA 298 AD at 307C-G)

- (i) The principal judgement or order may be supplemented in respect of accessory or consequential matters, for example, costs or interest on the judgement debt, which the court overlooked or inadvertently omitted to grant.
- (ii) The court may clarify its judgement or order, If, on proper interpretation, the meaning thereof remains obscure, ambiguous or otherwise uncertain, so as to give effect to its true intention, provide it does not thereby alter " the sense and substance" of the judgement or order.
- (iii) The court may correct a clerical, arithmetical or other error in its judgment or order so as to give effect to its true intention.
- (iv) Where counsel has argued the merits and not costs of a case (which nowadays often happens since the question of costs may depend upon the ultimate decision on the merits), but the court, in granting judgement, also makes an order concerning the costs, it may thereafter correct, alter or supplement that order.

[5] I, at paragraph 37.3 of the main order, omitted to indicate that costs should include 'costs occasioned by employment of two counsel where applicable'. I, in fact, intended to give effect to the fifth respondent's prayer sought and submission made during the hearing relating to costs of two counsel.


[6] I am thus of the view that the omission alluded to falls within the exception I mentioned earlier and, the costs order falls to be varied mero motu.

[7] I, in the result, make the following order.

Order

7.1 Paragraph 37.3 in the main judgment and order is varied and replaced with the following:

"The first and second respondents are ordered to pay, on party and party scale, costs, including costs occasioned by employment of two counsel, of the applicant and the fifth respondent, the one paying, the other to be absolved."



AML PHATUDI
JUDGE OF THE HIGH COURT

APPEARANCES

FOR THE APPLICANT : **MR S.O. RAVELE**
INSTRUCTED BY : **S.O. Ravele Attorneys**
Makhado-Thohoyandou

FOR THE 1 and 2 RESPONDENTS: **Adv. Z.S. MOTHUPI**
INSTRUCTED BY : **State Attorneys.**
Thohoyandou

FOR THE 5 RESPONDENT : **Adv. J ROUX SC**
Adv. L.F. TALJAARDT
INSTRUCTED BY : **Hammann-Moosa**
Incorporated-
Thohoyandou

HEARD : **29 November 2022**

JUDGMENT : **13 December 2022**

JUDGMENT VARIED 14 December 2022

JUDGEMENT DATE : Judgment handed down electronically by circulation to the parties' legal representatives by email and publication through SAFLII. The date deemed handed down is 14 December 2022.

