



THE SUPREME COURT OF APPEAL OF SOUTH AFRICA

JUDGMENT

Case No: 782/11
Not reportable

In the matter between:

**EUGENE ADLEM
JOSEPH ADLEM**

**FIRST APPELLANT
SECOND APPELLANT**

and

NESTOR ALGEMUS ARLOW

RESPONDENT

Neutral citation: *Adlem v Arlow* (782/11) [2013] ZASCA 7 (14 March 2013)

Coram: Cloete, Cachalia, Shongwe and Theron JJA and Erasmus AJA

Heard: 6 November 2012

Delivered 14 March 2013

Summary: Variation of provisional costs order refused.

ORDER

On appeal from: North West High Court, Mafikeng (Leeuw JP sitting as court of first instance):

- (a) Para 2(b) of the order made by this court in relation to the costs in the high court is confirmed.
- (b) The respondent is ordered to pay the appellants' costs occasioned by the argument to vary such order.

JUDGMENT

CLOETE JA (CACHALIA, SHONGWE AND THERON JJA AND ERASMUS AJA CONCURRING):

[1] In the order made by this court allowing the appeal, leave was granted to either party to make submissions in regard to the provisional order for costs in the high court. Leave was not granted to make submissions in regard to the order for the costs of appeal — that order was made by agreement as appears from para 14 of the judgment, and I see no good reason to revisit it. It was obviously correct on a parity of reasoning with what follows.

[2] The effect of para 2(b) of this court's order is limited, as the order expressly says, to 'the costs occasioned by the argument' ie the argument on the question before the high court. The order does not extend to the costs of the proceedings as a whole. The effect of the answer to the question put to the court and answered on appeal will have to be decided by the high court, if the parties cannot reach agreement. The fact that the answer given to the question may have adverse consequences for both parties (the respondent's counsel submitted that it will be as fatal to the appellants' first counterclaim as it will be to the respondent's claim) is to my mind beside the point when the costs occasioned by the argument are considered. The appellants' argument prevailed and the usual order should follow. The ramifications of the order will

have their own consequences on costs, and those ramifications are by no means certain — either party may amend; and it is as unnecessary for us to decide on the fate of the claim and counterclaims as presently formulated as it was for the high court.

[3] The following order is made:

- (a) Para 2(b) of the order made by this court in relation to the costs in the high court is confirmed.
- (b) The respondent is ordered to pay the appellants' costs occasioned by the argument to vary such order.

T D CLOETE
JUDGE OF APPEAL

APPEARANCES:

For Appellant: P J van der Walt
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For Respondent: S Güldenpfennig
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