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DISPUTE RESOLUTION ALERT

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A cautionary tale of the man who cried “admin action”

On 17 May 2019, the Supreme Court of Appeal (SCA) delivered its judgment in the case of *Motala v The Master of the North Gauteng High Court, Pretoria* (92/2018) [2019] ZASCA 60 (17 May 2019). The matter concerned an administrative review application of the Master’s decisions to remove Mr Motala as the joint provisional liquidator of seven companies forming the Pamodzi Group, as well as her decision to remove him from the panel of liquidators. The review application was dismissed in the Pretoria High Court and the matter was taken on appeal to the SCA.

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In the case of *Biowatch Trust v Registrar, Genetic Resources, & others* 2009 (6) SA 232 (CC), the Constitutional Court created a general rule to be applied to constitutional matters involving organs of state which is aimed at protecting unsuccessful litigants from paying costs to the state.

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The SCA dismissed the appeal on the basis that the relief sought by Mr Motala was of no practical effect. This was due to the fact that after he was removed as liquidator of the Pamodzi Group as well as from the panel of liquidators, Mr Motala subsequently applied to be reinstated onto the panel of liquidators, which application the Master refused. This later decision of the Master was not taken on review and therefore remains in force.

Upon the dismissal of the appeal, Mr Motala tried to invoke the *Biowatch* principle. The general rule in civil litigation is that costs should follow the result.

However, in the case of *Biowatch Trust v Registrar, Genetic Resources, & others* 2009 (6) SA 232 (CC), the Constitutional Court created a general rule to be applied to constitutional matters involving organs of state which is aimed at protecting unsuccessful litigants from paying costs to the state in order “to prevent the chilling effect that adverse costs orders might have on litigants seeking to assert constitutional

rights”. Mr Motala argued that should the appeal be dismissed, and given that he was trying to enforce his constitutional rights, he should be precluded from paying an adverse costs order.

The SCA agreed that the review of a public officer’s decision was a constitutional issue, but went on to state that this was not the end of the matter. Importantly, the SCA stressed the point that “the *Biowatch* rule does not constitute a licence to litigate with impunity against the state”. For the rule to apply, the issues at hand have to be genuine, substantive and raise constitutional considerations. The SCA was scathing of Mr Motala’s litigious antics and found *inter alia* that:


In the present case, although the appellant sought a review of the Master’s decision, this was no more than a civil challenge to an adverse administrative action which the appellant sought to overturn to the benefit of his own private pocket. It neither has a ‘radiating impact on other private parties’ nor does it raise constitutional imperatives and considerations such as the interpretation of legislation relevant to its adjudication.

The SCA therefore rejected Mr Motala’s reliance on the *Biowatch* principle and awarded costs against him, including costs of two counsel. This case provides an important lesson in that it heeds warning to potential litigants who are looking to abuse the legal process to bring frivolous and vexatious litigation against organs of state.

Julian Jones and Courtney Jones



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