

IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG LOCAL DIVISION, JOHANNESBURG

CASE NO: 069952/2023

DATE: 2023-07-25

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**DELETE WHICHEVER IS NOT APPLICABLE**

**(1) REPORTABLE: NO.**

**(2) OF INTEREST TO OTHER JUDGES: NO.**

**(3) REVISED.**

**DATE 25 July 2023**



**SIGNATURE**

In the matter between

VUSELELA SECURITY SPV (RF) PTY LTD

Applicant

and

LIZOXOLA PROPERTIES PROPRIETARY LIMITED & ANOTHER

Respondent

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**JUDGMENT EX TEMPORE**

**WILSON, J:**

I have in front of me a draft order in this matter, paragraphs 1 and 3 of which are agreed to between the parties. The only issue I am asked to decide is the question

of whether or not the first and second respondents should be required to pay the costs of this application on the scale as between attorney and client.

The basis on which Mr Cook argues that the costs order should be made on a scale as between attorney and client is that this order and the application arise out of the enforcement of a mortgage bond, the provisions of which make clear that in the event that any legal action is necessary to enforce it, an attorney and own client costs order will follow. Mr Cook, for reasons we need not traverse at the moment, seeks only a costs order on the attorney and client scale.

It is trite that, although an agreement to pay costs on such a scale does not bind a Court's discretion, a Court will generally give effect to an agreement to pay costs in the event of a contract having to be enforced unless there are reasons to depart from that general principle.

The first and second respondents' attorney asks that I not mulct the second respondent in the costs on the scale provided for in paragraph 2 of the order. But his heartfelt and robust submissions are unfortunately not grounded in any facts that are available on the papers.

The difficulty then is that I have no factual foundation on which to exercise a discretion not to give effect to the agreement to pay costs on a higher than normal

scale, and despite the submissions of the second respondent's attorney, with which I have a degree of sympathy, there is no basis in this case on which to refuse to give effect to the agreement. For that reason I will direct that the first and second respondents pay the applicant's costs on the scale as between attorney and client. That order being embodied in a draft which I shall presently make an order of Court which is otherwise agreed to.

Accordingly I make an order in terms of the draft  
10 handed up by counsel, which I have signed, dated and  
marked X. I hand down the order.

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**WILSON, J**  
**JUDGE OF THE HIGH COURT**

20 **DATE: 25 JULY 2023**