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Case No 351/1985

IN THE SUPREME COURT OF SOUTH AFRICA
APPELLATE DIVISION

In the matter between:

THE COMMUNITY DEVELOPMENT BOARD

Appellant

and

RABIA ESSA VALLI MAHOMED N O

MAHOMED SAYED MAHOMED N O

SHABIR AHMED MAHOMED N O

SHIRAZ ESSA VALLI MAHOMED N O

Respondents

CORAM:

TRENGOVE, HOEXTER, BOTHA, GROSSKOPF
et SMALBERGER JJA

HEARD:

15 AUGUST 1986

DELIVERED:

18 SEPTEMBER 1986

POSTEA:

28 NOVEMBER 1986

JUDGMENT

/BOTHA JA ...

BOTHA JA:-

In this appeal judgment was delivered on 18 September 1986. A provisional order of costs was then made, ordering the appellant to pay one-half of the respondents' costs of the appeal. Pursuant to leave granted to them to do so, the parties have now filed written heads of argument relating to the provisional order. The appellant submits that the order should stand. The respondents contend that the order should be changed, so that the respondents be awarded all their costs of the appeal, or, alternatively, 90% of their costs of the appeal.

The respondents' contention rests on certain calculations which have been made with a view to showing that the success achieved by the appellant in terms of the Court's order amounted, in monetary terms, to no more than 10% of the total sum involved in the issues. That result does not diverge appreciably from the prima

/facie ...

facie view expressed in the main judgment that the financial implications of the appellant's limited success appeared to be rather insignificant.

The respondents' argument in support of their contention that the provisional order should be changed in the manner indicated, loses sight of the fact that it was, after all, the appellant that achieved success in the appeal, albeit to a limited extent, and it also loses sight of the fact that the respondents could have safeguarded their position by making a suitable tender, which they failed to do, in respect of the issue on which the appellant succeeded.

The respondents' submissions have not revealed any relevant factor that was overlooked by the Court in making its provisional order as to costs, and have not raised any consideration sufficient to cause this Court to review its provisional order.

The order of the Court is as follows:

/1. ...

1. The provisional order of costs is made final.
2. The respondents are to pay the costs of the appellant in connection with the written arguments filed concerning a variation of the provisional order of costs.

A.S. BOTHA JA

TRENGOVE JA

HOEXTER JA

CONCUR

GROSSKOPF JA

SMALBERGER JA