

**IN THE MAGISTRATE'S COURT FOR THE DISTRICT OF JOHN TAOLO  
GAETSEWE**

**(HELD AT KATHU)**

**CASE NUMBER: 635/2021**

5 In the matter between:

**RECORD ENGINEERING (PTY) LTD**

**PLAINTIFF**

and

**CHRISTIAAN ENGELBRECHT t/a**

**DEFENDANT**

**ENGELBRECHT VERHURINGS**

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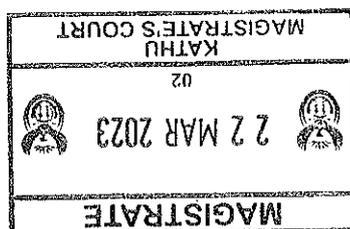
**COURT ORDER  
(COSTS)**

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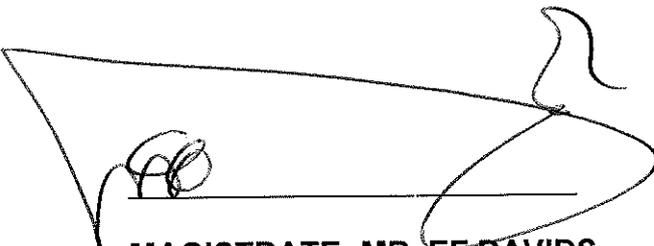
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1. The Defendant is ordered to pay the costs of the matter on a party-and-party scale of costs. No order granted for a higher Advocate's or Counsel's fees.

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MAGISTRATE: MR. EF DAVIDS

KATHU MAGISTRATES COURT

JTG DISTRICT

22/3/2023

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**JUDGMENT**

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**1. INTRODUCTION AND BACKGROUND**

The Plaintiff is RECORD ENGINEERING (PTY) LTD (hereinafter called the "Plaintiff"). The Plaintiff was represented on the date of trial by Adv. JD Matthee an Advocate and Mr. Higgs an Attorney.

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The Defendant is MR. CHRISTIAAN ENGELBRECHT t/a ENGELBRECHT VERHURINGS (hereinafter called the "Defendant"). The Defendant was represented on the date of trial by Ms. Erica Viljoen an Attorney.

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This is a Judgment pertaining to the costs of the action between the abovementioned parties.

On 29 July 2021 the Plaintiff issued a Combined Summons against the Defendant claiming payment in the amount of R51, 600.00 for the refund of its deposit paid in terms of a lease agreement, interest and costs of suit.

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This claim was defended by the Defendant and the Defendant also entered a Counterclaim.

5 The matter was settled on the date of trial namely 27 January 2023.

On 27 January 2023 this court ordered by agreement that:

- 10 1. The Defendant will pay an amount of R42,100.00 to the Plaintiff in full and final settlement of all of the claims between the parties as pleaded under case number 635/2021;
2. The sum of R42,100.00 will be paid in three equal instalments with the first payment to be made on or before 7 February 2023 and the remainder of the payments on or before the 7<sup>th</sup> of each consecutive month thereafter until settlement in full;
- 15 3. Costs to be argued.

The costs of this matter were also argued on 27 January 2023. There was no written Heads of Arguments but the arguments are on record. The arguments were mechanically recorded.

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## **2. ISSUES**

The crux of the costs arguing and difference between the parties is as follows:

- 25 (a) The Plaintiff requested costs in its favour on an attorney-and-client-scale of costs and Higher Counsel fees relying on the arguments that the matter was not simple in law and fact and that the Defendant's Counterclaim was frivolous and vexatious. The Plaintiff also argued that the Defendant manufactured his invoices which were part of the defence and counterclaim to scupper the claim of the Plaintiff and further that the Defendant inflated the said invoices to inflate his counterclaim. Further  
30 that the Counterclaim was fabricated. The Plaintiff's Advocate also referred to the lease agreement, clause 8 of the lease agreement which was in dispute and that extrinsic evidence can be allowed as per case

law in respect of contract claims which according to him makes this matter technical and not simple anymore.

5 (b) The Defendant's attorney on the other hand argued that the issues were not complex and that it was simple. The argument was that it was a simple lease agreement and the Plaintiff didn't need specialised legal services in the form of an Advocate in this matter. Further the appointment of an Advocate is not reasonable especially if it was for the account of another person. The Defendant also denied the allegations (made during arguments by the Advocate of the Plaintiff) in respect of  
10 manufactured and inflated invoices. The Defendant further argued that the Counterclaim was not frivolous and unnecessary and there was no *malafides* on the side of the Defendant. The Defendant requested that each party pay their own costs and if the court grant a costs order that it excludes Advocates fees.

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### 3. LEGAL PRINCIPLES AND APPLICATION

To get back to specific consideration of costs the following is also very crucial and important to this matter.

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Costs are granted in the discretion of the particular court and after a proper consideration in respect of what is appropriate in the particular circumstances.

When it comes to costs the established principle is that a cost order be made  
25 only at the end of the matter. This matter came to an end when the court granted an order as per agreement between the parties on 27 January 2023.

What is also important about this matter is that the Plaintiff succeeded with a bulk part of its claim even though through settlement. It is important for this  
30 costs judgment because there was a finding in favour of the Plaintiff. This is definitive of the rights of the parties and that it had disposed of the action.

It is a general rule that costs should follow the successful party.

What is also crucial in this matter for costs is:

- 5           3.1 The main claim was only for the amount of R51, 600.00, for the refund of a deposit;
- 3.2 There was a defence and counterclaims but the total amount of the counterclaims amounts to R55, 685.15.
- 3.3 The main claim and counterclaim are relatively low and don't warrant the  
10           appointment of a Counsel by the Plaintiff.
- 3.4 There was no evidence led and finalised. The trail didn't proceed and the matter was settled. This is important because this court can't now make a ruling on the Defendant's invoices. So the argument of the Plaintiff in respect of the alleged inflation and manufacturing of the  
15           invoices for purposes of costs is not accepted by me and fails.
- 3.5 I am also not satisfied with the Plaintiff's the arguments of complexity. I agree with the Defendants attorney that this is simple claims which an attorney can deal with and doesn't warrant an Advocate which provides specialised legal services.
- 20           3.6 The Defendant's Defence and Counterclaim was not tested in open court and I can't come to the conclusion it was frivolous and/or vexatious.
- 3.7 It is established and not in dispute that the Plaintiff succeeded with part of its claim.
- 3.8 The Plaintiff didn't succeed with the whole of its claim as there was no  
25           order granted for interest and succeeded only with R42, 100.00 of its claim of R51, 600.00. With this also in mind it would be unreasonable to punish the Defendant with a punishment court order.
- 3.9 Also if this court grants a costs order of attorney-and-client costs it is a punishment order which needs proper merit and the Plaintiff's Advocate didn't properly convince me to grant such order.  
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- 3.10       Also the submissions of the Plaintiff's Counsel is rejected on why a punishment costs order should be granted against the Defendant on a scale as between attorney-and-client costs.

The defence and counterclaim of the Defendant can not in my view be described as so unreasonable, irrational, foolish, absurd, preposterous or outrageous such as to justify the punishment of the Defendant with an Attorney-and-Client costs order.

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In the exercise of my discretion on costs it seems inappropriate that the Plaintiff and the Defendant each be directed to pay their own costs relating to the matter.

10 The matter is also not complex enough to justify the appointment of Counsel for the Plaintiff and a costs order of Higher Advocate's fees. The Defendant rightly used only an attorney in this matter. It would further be unreasonable to punish the Defendant with a Higher Advocate's fees costs order.

15 This Court is thus of the opinion that the Plaintiff was successful in respect of the matter and costs should follow the successful party.

Ultimately after consideration of the whole of the matter I am also of the opinion that there is no reason to deviate from the usual party and party costs for the  
20 successful party who is the Plaintiff. I am of the opinion that a cost order on a party-and-party scale for the successful party is appropriate in the circumstances and in this matter.

Thus this court issues the following order:

**4. ORDER**

25 The Defendant is ordered to pay the costs of the matter on a party-and-party scale of costs. No order is granted for a higher Advocate's or Counsel's fees.

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**MAGISTRATE: MR. EF DAVIDS**  
KATHU  
22/3/2022