



HIGH COURT OF AUSTRALIA

14 August 2019

NORTHERN TERRITORY OF AUSTRALIA v SOULEYMANE SANGARE
[2019] HCA 25

Today the High Court unanimously allowed an appeal from a decision of the Court of Appeal of the Supreme Court of the Northern Territory. The issue was whether, in the exercise of the judicial discretion as to costs, the impecuniosity of the unsuccessful party was a consideration that, without more, could justify a decision to deny the successful party its costs.

The respondent is a citizen of Guinea who arrived in Australia under a Belgian passport belonging to his brother. Upon arrival he unsuccessfully applied for a protection visa. The Northern Territory Department of Infrastructure ("the Department") employed the respondent on a temporary basis as a civil engineer, and agreed to sponsor him under a skilled migration scheme run by the Commonwealth Government. As part of that scheme, the respondent was required to apply for and obtain the appropriate visa. The respondent applied for a temporary work visa but was advised that his application was invalid because he had previously been refused a protection visa. The respondent sought expressions of support for his application from the Minister of the Department. The Minister requested that officers of the Department brief him on the respondent's request. The Minister was provided with a briefing note which, according to the respondent, contained material fabricated to make it appear that he had provided false and misleading information regarding his immigration status and to make it appear that he was a dishonest person of bad character.

The respondent commenced proceedings against the appellant for defamation in the Local Court of the Northern Territory. The proceedings were transferred to the Supreme Court of the Northern Territory as the respondent sought damages in the sum of \$5 million. The respondent was unsuccessful at first instance and the Court of Appeal dismissed the respondent's appeal.

The appellant, which had been wholly successful on appeal and at trial, sought an order that the respondent pay its costs of the trial and the appeal. The Court of Appeal acknowledged that customarily, in such circumstances, an order for costs would be made on the basis that costs should follow the event, but declined to make an order for costs on the basis that such an award would likely be futile because of the respondent's impecuniosity.

By grant of special leave, the appellant appealed to the High Court. The High Court observed that a guiding principle by reference to which the discretion to award costs should be exercised is that the successful party is generally entitled to his or her costs by way of indemnity against the expense of litigation that should not, in justice, have been visited upon that party. In the present case, there had been no conduct on the part of the appellant that might have weighed against the exercise of the discretion in its favour. The Court, noting that the impecuniosity of a defendant wrongdoer is not a reason for declining to order the payment of damages found to be due to an injured plaintiff, held that it was likewise erroneous to decline to make an order for costs because it was perceived that the debt might not be paid.

- *This statement is not intended to be a substitute for the reasons of the High Court or to be used in any later consideration of the Court's reasons.*