

In the High Court of Swaziland

Civ. Case No. 1349/93

In the matter between:

LEORNARD DLAMINI

APPLICANT

and

ROAD TRANSPORTATION BOARD

1ST RESPONDENT

REJOICE KUNENE

2ND RESPONDENT

ROAD TRANSPORTATION BOARD

3RD RESPONDENT

ATTORNEY GENERAL

4TH RESPONDENT

CORAM:

Hull, C.J.

FOR APPLICANT

Attorney General

FOR FIRST RESPONDENT

Attorney General

FOR SECOND RESPONDENT

Zwane, M.

FOR THIRD RESPONDENT

Attorney General

Judgment

(15/11/93)

Section 18(3) of the Road Transportation Act 1963, as amended, provides that notice of an appeal against a decision of the Road Transportation Board is to be lodged in writing with the board and a copy thereof forwarded to each other party to the application within twenty one days of the decision. The notice must set out fully the grounds on which the appeal is based. It is in my view the duty of the appellant to comply with these requirements.

The section, which regulates appeals, does not set out in any detail the procedure to be followed on an appeal. Section 28(c) enables regulations to be made for that purpose, though none have yet been promulgated.

Notwithstanding either of these points, an appeal is to be conducted in accordance with the rules of natural justice. The parties must be notified of the date of hearing and given a reasonable opportunity to be heard. This is a requirement of the common law.

The second respondent on this present application for review had applied to the Road Transportation Board for a permit under the Act. The applicant successfully opposed her application. Then she appealed under section 18.

When the matter first came up on 19th July 1993 the Appeals Board directed that it be deferred to its next sitting because the present applicant had not been given notice of the hearing.

The appeal was therefore set down for hearing on 13th September. On that day it was heard and allowed.

The present applicant complains (inter alia) that he was never given a copy of the notice of appeal and that he was not given notice of the date of the hearing on 13th September.

In his founding affidavit he says simply that he had never received the notice of appeal. He also said, without going into further detail, that a copy of a purported letter of invitation to the hearing of the appeal, (which bears the date 12th August 1993), had been made available to him. He said (with some measure of justification in my view) that it was unclear in its purport. However his more fundamental assertion was that he had never received this either.

The second respondent in an answering affidavit states that she sent a copy of the notice of appeal to the applicant (amongst others) by registered post, as long ago as 22nd December 1992. She has annexed at "A" and "B1" to her

affidavit documents showing that the post office received for registration documents addressed to the applicant on that day.

The Chairman of the Appeals Board, in his answering affidavit, said in paragraph 2.8 that he was unable to comment on any invitation dated 12th August, but also said that a letter of invitation dated 17th August was sent to the respondent (amongst others.) He has annexed this and documents showing the receipt by the post office of items for posting by registered mail to various persons, including the applicant.

The respondents also relied on an assertion that a Mr. Harry S. Dlamini appeared at the hearing on 13th September and attempted to represent the applicant, but withdrew when he was unable to produce a written authority to do so.

The applicant has said on oath that he did not receive either the notice of appeal or notice of the hearing. Although it is asserted otherwise, it appears from the first respondent's affidavit, from the minute annexed at "A", that in fact Mr. Harry Dlamini withdrew (after he had been asked to produce a written authority to act) because he had no instructions in the matter from the applicant. The other documents annexed by the respondents to their affidavits do not establish that the applicant did in fact receive the notices. They only show that they were lodged in the post office. No receipts from the applicant, acknowledging delivery, have been produced.

It was submitted that, under section 33 of the Interpretation Act 1970 (No. 21 of 1970), service had been validly effected by the posting of the notices to the applicant in envelopes addressed to him at his post office box number. Those provisions only apply, however, in cases where a "law" authorises or requires service. "Law" in the section, means a statutory provision or order : see section 2(1) of the same Act.

That may be sufficient for the notice of appeal as such, but the requirement for notice of the hearing is a common law stipulation, and in any event in either case it is open to the applicant to prove that he did not in fact receive either document. From the whole history of the matter before the road transportation authorities, it appears to me unlikely that the applicant would not have sought to contest the appeal if he had in fact been aware of the date of hearing. He was not challenged in cross-examination on his deposition that he did not receive the notices. I conclude that he probably did not do so.

In the circumstances, the application for review is allowed. The decision of the Appeals Board is set aside. The matter is remitted to it for rehearing, on due notice to the applicant. I will express the view that it should be re-heard as quickly as possible.

The respondents are to pay the applicant's costs on this review.

A handwritten signature in cursive script, appearing to read 'D. Hull', written in dark ink.

DAVID HULL
CHIEF JUSTICE