IN THE HIGH COURT OF SWAZILAND

CIV. CASE NO. 2174/98

In the matter between

SANDILE HLATSHWAYO	APPLICANT
And	
THE UNIVERSITY OF SWAZILAND	1st RESPONDENT
THE UNIVERSITY SENATE	2nd RESPONDENT
Coram	S.B. MAPHALALA - J
For Applicant	MR. MNISI
For Respondents	MR. T. MASUKU

RULING ON POINTS IN LIMINE

(04/11/98)

The matter before court was brought with certificate of urgency for an order in the following terms:

1. Condoning non compliance with the rules of the court affecting forms, notice and service and considering this matter on an urgent basis;

2. That a rule nisi do hereby issue calling upon the respondents to show cause on a date to be determined by the court why?

2.1 The decision of the second respondent of 9th March, 1998 should not be reviewed, corrected or set aside;

2.2 The first respondent should not be ordered and directed to register the applicant for his Year 2 of Diploma in Agriculture forthwith;

3. Costs of this application

4. Further and/or alternative relief.

Both parties have filed their respective affidavits and the matter came before me for submissions on the 27th October 1998. Mr. Masuku raised two points in limine. The first point he raised is that the applicant has not shown that the matter is urgent. The applicant brings this application six (6) months after the decision which is sought to be reviewed was made. The applicant does not annex in his papers a letter of appeal to the Council to give his case credence that he did file an appeal and has been waiting to be called by Council to hear the appeal. He does not even mention in his papers what his grounds of appeal as reflected in that letter. Instead he files annexure "A" which is a letter applying that he be re-admitted. Mr. Masuku contends that the tenor of this letter is adverse to applicant's case in that in it he accepts that what he did was wrong and he was remorseful such that he has learnt his lesson.

The second leg of respondent point in limine is that this application for review was not brought in terms of Rule 53 of the High Court Rules. Rule 53 is mandatory to ensure the smooth flow of litigation. Applicant must lay good grounds for condonation for the court to exercise its discretion. The applicant has not made a case for condonation for the abridgement of Rule 53. This rule lays down the procedure to be adopted when it is desired to review the decision or proceedings either of an inferior court or of any tribunal, board or officer performing judicial, quasi-judicial or administrative functions. In the present case applicant has not applied for the abridgement of procedure but of "forms", "notice and "service" as reflected in prayer 1 of his notice of motion. Further more Mr. Masuku argued that though there is no statutory period prescribed within which proceedings for review must be brought, but it is clear that they must be brought within a reasonable time. Here contends Mr. Masuku the applicant waited for 6 (six) months in which to launch this application. That the application be dismissed with costs on the basis of the points raise in limine.

Mr. Mnisi for the applicant on the question of urgency directed the court's attention to paragraphs 16 and 17 of the applicant's founding affidavit where he avers that on the 16th March, 1998 he filed his appeal to the University Council appealing against his sentence, the appeal has not been heard to-date. During the registration period for the academic year 1998/1999 the registrar advised him to re-apply which he did on the 2nd August 1998 as evidenced by his annexure "A". Mr. Mnisi also directed the court's attention to paragraph 3.6 of applicant replying affidavit where applicant submit that he is entitled to the relief sought in paragraph 2.1 and 2.2. because the delay in bringing this application was occasioned by the mistaken belief that his appeal shall be timeously heard and that he was ill advised to re-apply.

On the issue of compliance with Rule 53 Mr. Mnisi concedes that Rule 53 has not been complied with. However, he directed the court to paragraph 3.5 of applicant's replying affidavit where applicant submits that the matter was brought on a certificate of urgency and condonation has been prayed for, so the provisions of Rule 53 were waived.

These are the issues before me. I am in full agreement with Mr. Masuku that the applicant has not proved urgency in terms of Section 6 of the High Court Rules and has not followed the instructive requirements spelt out by Dunn J in the case of Henwood vs Maloma Colliers (Pty) Ltd. The appellant has not filed a letter of appeal

Council, which he alleges he lodged with the University on the 16th March 1998. He does not explain why such a letter is not filed in his papers. Another curious aspect of his case is that according to paragraph 16 of his founding affidavit he alleges that he was appealing against sentence yet the tenor of the review papers attack the procedure adopted by senate when his matter was heard. Applicant does not even allege in the absence of that letter what his grounds in that letter were to at least give credence to his story that he lodged this appeal to Council as he allege. Instead the court is shown annexure "A" which does not help him in anyway in fact that letter is adverse to his case in that there he admits his wrongdoing and pleads for clemency from the University. There is no indication that he wrote that letter under duress. It is my considered view that applicant never lodged a letter of appeal to the University as he allege in his founding affidavit. It took him 6 (six) months to bring these reviews proceedings to this court. I was unable to find any urgency at all for the court to waive or condone the requirements of Rule 53 of the High Court Rules (refer Edfin (Pty) Ltd vs Durable Engineering Works (Pty) 1991 (2) S.A. 366 © at page 368 E - H).

In the result, I uphold the points in limine and dismiss the application with costs.

S.B. MAPHALALA

JUDGE