

THE HIGH COURT OF SWAZILAND

BHEKI G. SIMELANE & CO.

Vs

THOMAS M. MABELESA

Civ. Trial No. 3044/97

CORAM

S.W. SAPIRE, CJ

FOR APPLICANT

MR. THEMBA SIMELANE

FOR RESPONDENT

LINDIFA MAMB A

JUDGMENT (15/11/99)

The plaintiff was on the 6th February, 1998, awarded summary judgment against the defendant who is now the applicant in this matter. The defendant noted an appeal against this judgment on the 25th February 1998, thereafter applied for a stay in execution pending the appeal. An order was made in terms of which execution was stayed. The defendant has not complied with the rules of the appeal court and in terms thereof the appeal is deemed to have lapsed.

When the matter was called the attorney appearing for the respondent indicated that the respondent had now been satisfied that there were no grounds for appeal and was not proceeding therewith. It would follow that the application which was made to set aside the order staying execution should be granted. Respondent's attorney did however argue that I should withhold the applicant's costs because only in the affidavits in this application did it appear how a particular amount had been dealt with. However attractive this argument may sound in the ears of the respondent it is specious and has no merits whatsoever. The respondent has from the beginning had every opportunity of satisfying himself as to the correctness of the applicant's account and of querying any amounts thereon.

After giving notice of his intention to defend the main action, he allowed summary judgment to be granted against him and the conduct his defence of the matter to say the least has been uninspiring, and lacking in conviction

The tactics adopted by him have the features of an attempt to delay and to avoid payment.

For these reasons I do not think that I can in any way divert from the normal rule and the costs must follow the cause. The applicant is therefore entitled to the costs of this application.

S.W. SAPIRE CJ