

IN THE HIGH COURT OF SWAZILAND

CIVIL CASE NO.646/04

In the matter between:

NTOMBIFUTHI MAGAGULA PLAINTIFF

VS

ATTORNEY GENERAL DEFENDANT

CORAM: MATSEBULA J

FOR PLAINTIFF

FOR RESPONDENT:MISS ZWANE

JUDGMENT

13th MARCH 2005

The applicant moved an application for the following relief:

- (a) Granting the applicant condonation the late filing of its plea and removal of the bar;
- (b) Granting applicant leave to file its plea;
- (c) Further and/or alternative relief.

In support of this application, a founding affidavit was filed deposed to by one Lunga Dlamini. The deponent is Crown counsel in the employ of the applicant. Deponent states that she inherited the file of this litigation from another officer who has since left the office of the Attorney General. Deponent admits that on the 29th September 2003, applicant did receive a letter of demand from the respondent. After they received this letter of demand some correspondence was entered into between the officers of the applicant on the one hand and the officers of the Ministry of Health and Social Welfare on the other. The deponent admits further that the summons in this matter was issued on the 19th March 2004 and probably served on the applicant and applicant filed a notice of intention to defend on the 6th April 2004. Applicant failed to file its plea timeously and respondent reminded applicant to file its plea within three days and warned that if they failed it would be ipso facto barred. Notwithstanding this warning by respondent, applicant only filed its plea way out of time after it had been barred. The reasons advanced by applicant for its failure are not convincing to say the least. The least that applicant must show in these matters where an application for condonation is made is to show a good cause for its non-compliance with the prescribed times in terms of Rule 22. Applicant must also briefly state what its defence is in the main, action.... The,la&t point is important becauscit.enables the, court to consider whether or not respondent cannot be adequately compensated by an appropriate award as to costs.

Ms. Zwane on behalf of the respondent, has asked the court to dismiss the application and mark its disapproval by ordering applicant to pay special costs. The court is with respect not in agreement that such cause would be appropriate in this case.

In the result, the court will dismiss the application for condonation with costs.

J. M. MATSEBULA

JUDGE