

**IN THE HIGH COURT OF SWAZILAND**

HELD AT MBABANE

Civil Case No. 1857/2008

ERIC DLAMINI

Applicant

And

ATTORNEY GENERAL

Respondent

Coram: S.B. MAPHALALA - J

For the Applicant: MR. T. MLANGENI

For the Respondent: MR. B. TSABEDZE

JUDGMENT

[1] The Applicant/Defendant being the Attorney - General of Swaziland seeks an order for condonation for the late filing of its Notice of Intention to Defend.

[2] It is trite law that in order for the Applicant to obtain relief he must satisfactorily explain the reason for his default, that the application is *bona fide* not made with the intention of merely delaying Plaintiffs claim and should also establish that he has a good or *bona fide* defence to the Plaintiffs claim. In this regard reference can be made to the cases of *Msibi vs Mlaula Estates (Pty) Ltd*, *Msibi vs G.M. Kalla and Co. 1970 - 76 S.L.R. 345 at 344* and the South African case of *Sommerich vs Computronics Ltd 1982*.

[3] In arguments before me it was contended for the Applicant that the order for condonation for the late filing of its Notice of Intention to Defend is brought in terms of Rule 27 of the High Court Rules which reads as follows:

27(1) In the absence of agreement between the parties, the court may upon application on notice and on good cause shown, make an order extending or abridging any time prescribed by these Rules or by an order extending or abridging any time for doing any act or taking any step in connection with any proceedings of any nature whatsoever upon such terms as to it seem fit.

[4] According to the Applicant this Rule confers upon the court a wide discretion to grant or refuse the application. The court must exercise its discretion judicially having due regard to the attendant circumstances of the case. The main requirement to be satisfied by Applicant under this Rule is "**good cause**" and what amounts to "**good cause**" was explained in the case of *Smith No. vs Brummer No. and Another 1954 (3) S.A. 352 at 357* as follows:

**"It would be quite impossible to frame an exhaustive definition of what could constitute sufficient cause to justify the grant of indulgence. Any attempt to do so would merely hamper the exercise of a discretion which the Rules have purposely made very extensive, and which it is highly desirable not to abridge. All that can be said is that Applicant must show something which entitles him to ask for the**

**indulgence of the Court: what that something is must be decided upon the circumstances of each particular application"**

[5] The Applicant further argues that the test is whether the other party is not prejudiced to an extent which cannot be cured by an appropriate order as to costs. In this regard the court was referred to the case of *Silverthorne vs Simon 1907 T.S. 123* where Solomon J had this to say:

**"Whenever there is any satisfactory explanation of the delay on the part of the defendant, if the Court comes to the conclusion that Defendant's application is *bona fide*, that he is really anxious to contest the case and believes he has a good defence to the action, and if in the circumstances, the order can be made without any damage or injury to the Plaintiff other than can be remedied by an order as to payment of costs. I think when these conditions are present in any application, the Court should as far as possible assist the Defendant and allow him to file his papers in the action".**

[6] The final argument for the Applicant is that any person who shown that he has a direct and substantial interest in the proceedings, and that his opposition might contribute something to a just decision of the case, should not be deprived of an opportunity of being heard.

[7] On the other hand it was contended for the Respondent in the present matter that the Applicant has not made any averments which, if proved at the trial, would amount to a defence. All that it has done is to offer an explanation for the delay in filing the Notice to Defend. The Applicant was neglectful in not paying proper attention to the summons which was served upon it. The administrative lapse was its own making and does not offer a reasonable explanation.

[8] Having considered the arguments of the parties I have come to the view that the application by the Applicant is *bona fide*, that Applicant is really anxious to contest the case and believes that it has a good defence to the action.

[9] In the result, for the afore-going reasons the application is granted and Applicant is to pay wasted costs.

Pronounced at the High Court sitting at Mbabane this 29<sup>th</sup> day of August 2008.

**S.B. MAPHALALA**  
**PRINCIPAL JUDGE**