

**IN THE HIGH COURT OF SWAZILAND**  
HELD AT MBABANE

CIVIL CASE NO. 3565/06

In the matter between:

**CONCO LIMITED t/a COCA COLA  
SWAZILAND** **APPLICANT**

and

**CMAC COMMISSIONER SIMPHIWE  
SHABANGU** **1<sup>st</sup>**  
**RESPONDENT**

**THEMBI CEBE** **2<sup>nd</sup>**  
**RESPONDENT**

In re:

**THEMBI CEBE** **APPLICANT**

and

**CMAC COMMISSIONER SIMPHIWE  
SHABANGU** **1<sup>st</sup>**  
**RESPONDENT**

**CONCO LIMITED t/a COCA COLA  
SWAZILAND** **2<sup>nd</sup>**  
**RESPONDENT**

CORAM: Q.M. MABUZA -J

FOR THE APPLICANT: MR. Z.D. JELE OF ROBINSON  
BERTRAM

FOR THE 2<sup>nd</sup> RESPONDENT:MR. M. MKHWANAZI OF  
MKHWANAZI & ASSOCIATES

## **RULING 15/2/08**

[1] This application came under certificate of urgency for an order inter alia in the following terms:

2.1. That the order issued by the above Honourable Court on the 2<sup>nd</sup> day of February 2007, be and is hereby rescinded and set aside;

2.2. That the application for review instituted by the Second Respondent against the Applicant and the First Respondent, be and is hereby re-instated for argument;

2.3. Costs.

[2] On the 2/2/07 the Court granted the following order:

***"That the 1<sup>st</sup> Respondents ruling under CMAC dispute number MNZ 028/05 is hereby renewed, corrected and/or set aside."***<sup>99</sup>

[3] The order was granted on the basis that the 1<sup>st</sup> Respondent (CMAC) had failed to file the record of proceedings herein.

[4] The 2<sup>nd</sup> Respondent (Miss Cebe) in her application had requested the following:

(a) That there be a review of the 1<sup>st</sup> Respondent (CMAC's) decision.

(b) That the decision be corrected.

(c) That the decision be set aside.

[5] My considered view is that in order to set aside or correct a decision you must first open up the matter and discuss or ventilate the issues complained of with everybody getting a fair hearing on the merits. This was not done. There was no record to facilitate this process. From my previous dealings with matters coming for review from CMAC there are expectations that CMAC will prepare a record. I do not know where these expectations come from and until this expectation is realised or sorted out I imagine it should be the duty of the aggrieved party to make sure the record for review is placed before a Court of review.

[6] ***In casu*** having set aside the award by the 1<sup>st</sup> Respondent (CMAC) the Court postponed the matter to the 23/2/07 for argument by the Applicant. The matter had already been set aside and was no longer before the court for further argument. In other words the Applicants were already erroneously out of court.

[7] When the Court granted the order herein the Applicant was already on record as a party to the review proceedings having filed its notice to oppose as well as its answering affidavit. There is therefore in my view no need for it to comply with the usual procedures in regard to rescission. Because of the Court's error the Applicant found itself out of Court.

[8] In the circumstances I order as follows:

**(a) That the order issued by the above Honourable Court on the 2<sup>nd</sup> day of February 2007, be and is hereby rescinded and set aside.**

**(b) That the application for review instituted by the Second Respondent against the Applicant and the First Respondent, be and is hereby re-instated for argument.**

**(c) Costs are hereby reserved.**

**Q.M. MABUZA-J**