



IN THE SUPREME COURT OF SWAZILAND

JUDGMENT

Civil Appeal Case No.90/12

In the matter between:

PRISCILLA DLAMINI

Applicant

vs

HUNTER SHONGWE

1st Respondent

OUPA LAPIDOS N.O.

2nd Respondent

WILSON NDLAVELA MAVIMBELA N.O.

3rd Respondent

Neutral citation: *Priscilla Dlamini vs Hunter Shongwe & Others (90/2012) [2013]*
[SZSC 11] (31 May 2013)

Coram: M.M. Ramodibedi C.J.
A.M. Ebrahim J.A.
E.A. Ota J.A.

For the Applicant: B. Mndzebele

For the 1st Respondent: L. Malinga

For the 2nd & 3rd Respondents: V. Kunene

Heard: 10 May 2013

Delivered: 31 May 2013

Summary: *Civil application to have appeal noted by the 1st Respondent to be deemed to be abandoned in terms of the provisions of Rule 30(4) of the Court of Appeal Rules 1971 – Appeal withdrawn at the hearing - 1st Respondent to pay the wasted costs.*

JUDGMENT

EBRAHIM JA

[1] The Applicant brought an application by way of notice of motion in which she sought an order:

1. *Declaring the appeal noted by the Appellant (1st Respondent) on the 17th December 2012 against the judgment of the High Court of Swaziland handed down on 13th December 2012 abandoned.*
2. *Costs of suit.*

She sought no order against 2nd and 3rd Respondents.

[2] It was the Applicant's case that on the 13th December 2012 the High Court of Swaziland dismissed an application brought by the 1st Respondent to interdict the Applicant and the 2nd and 3rd Respondents from ejecting him from her home or house.

[3] The 1st Respondent noted an appeal against this decision on the 17th December 2012 but has failed to file a record of proceedings in accordance with the provisions of Rule 30 of the Court of Appeal Rules, 1971 (The Rules).

[4] It was the Applicant's assertion that the record of proceedings ought to have been filed within two months of the date of the noting of the Appeal, that is on or before the 18th February 2012. To date, approximately four months after noting of the appeal, no record of proceedings has been filed by the Respondent.

[5] Rule 30 of the Rules provides:

“30. (1) The appellant shall prepare the record on appeal in accordance with sub-rules (5) and (6) hereof and shall within 2 months of the date of noting of the appeal lodge a copy thereof with the Registrar of the High Court for certification as correct.

(2) ...

(3) ...

(4) Subject to rule 16(1), if an appellant fails to note an appeal or to submit or resubmit the record for certification within the time provided by this rule, the appeal shall be deemed to have been abandoned”.

Rule 16 of the Rules provides:

“16. (1) The Judge President or any judge of appeal designated by him may on application extend any time prescribed by these rules:

Provided that the Judge President or such judge of appeal may if he thinks fit refer the application to the Court of Appeal for decision. (Amended L.N. 102/1976.)”

- [6] No application was made by the 1st Respondent in which he sought an extension of time to file the record as provided for by Rule 16(1) of the Rules.
- [7] The Applicant through her attorney sought leave to have this matter enrolled in order to deal with the point raised by the Applicant that the appeal must be deemed to be abandoned.
- [8] The matter was enrolled for hearing on the 10th May 2013 and the Applicant was directed to file her Heads of Argument on or before the 6th May 2013.
- [9] The Applicant filed her heads timeously.
- [10] The Appellant failed to satisfy the Rules pertaining to the filing of the record in terms of Rule 30. Mr. L. Malinga appeared before this court on the 10th May 2013, representing the 1st Respondent, (Hunter Shongwe) and advised that his client was withdrawing his appeal and tendering costs. To his credit, this concession was properly made.

[11] Accordingly the appeal is dismissed with costs.

A.M. EBRAHIM
JUSTICE OF APPEAL

M.M. RAMODIBEDI
CHIEF JUSTICE

E.A. OTA
JUSTICE OF APPEAL