

IN THE INDUSTRIAL COURT OF SWAZILAND

HELD AT MBABANE

CASE NO. 44/99

In the matter between:

SOLOMON MAGAGULA

APPLICANT

and

PIGGS PEAK HOTEL AND CASINO

(PTY) LIMITED

RESPONDENT

CORAM:

NDERI NDUMA :

PRESIDENT

JOSIAH YENDE:

MEMBER

NICHOLAS MANANA:

MEMBER

FOR APPLICANT:

O. NZIMA. (ABSENT)

FOR RESPONDENT:

N. J. HLOPHE

RULING

29/11/02

The Applicant Solomon Magagula filed a Notice of Application for rescission of the judgement of the court dismissing the application for unresolved dispute for non-attendance on the 16th March 2000. He further sought the matter to be reinstated on the roll for setting of a trial date.

The application dated the 19th September 2002 was set by Mr. Nzima for the Applicant to be heard on the 13th October 2002 at 9.30a.m. or soon thereafter.

The application is supported by a Founding Affidavit of Osborne Nzima, counsel for the Applicant.

1

He states that on the 16 March 2000 his professional colleague Sikelela Magongo was supposed to appear for the Applicant but he arrived late in court and found the matter had already been dismissed. The delay was because Mr. Magongo was using public transport.

There is no Supporting Affidavit by Mr. Magongo and Mr. Nzima does not disclose the source of this information.

What is worse, the application for rescission was moved two (2) years and six (6) months after the judgement was handed down.

This delay is inordinate and even if the application had any merit at all, which I find it has not, the court would have used its discretion to refuse the application for rescission as this amounts to an abuse of the process of the court.

Furthermore, on the 15th October 2002 Mr. Nzima failed to appear for the hearing of the application and

no explanation for the non attendance has been availed this court to date.

For the aforesaid reasons, the application for rescission is refused and counsel is to pay costs of the same debonis propis.

NDERI NDUMA

JUDGE PRESIDENT - INDUSTRIAL COURT