

IN THE INDUSTRIAL COURT OF SWAZILAND

HELD AT MBABANE

CASE NO. 128/2000

In the matter between:

SIPHIWE MASUKU

1st APPLICANT

MOSES NDWANDWA

2ND APPLICANT

and

CONWAY NYMAN (PTY) LIMITED

RESPONDENT

CORAM

N. NKONYANE: ACTING JUDGE

DAN MANGO: MEMBER

GILBERT NDZINISA: MEMBER

FOR THE APPLICANT

MR. SAKHELE HLOPHE

NTIWANE & ASSOCIATES

FOR THE RESPONDENT

MR. SANDILE D MADAU

ROBINSON BERTRAM

R U L I N G 05.10.2005

The application was brought by the applicant for an order in the following terms;

1. *Granting applicant leave to re-instate the matter on the court's roll.*
2. *Further and/or alternative relief.*

The application is consequent to an order of the court made on 17/03/03. On this date the matter was before the court. There was no appearance by both parties on that day. The matter was removed from the roll. The court ordered that the matter was not going to be reinstated without leave of the court.

On the 30th May 2005, the matter was before the court. In terms of the roll, it was allocated two days being the 30th and 31st May 2005. The court noted that the order of the court of 17/03/03 had not been complied with. It became apparent therefore that the matter was not properly before the court.

The present application therefore is in terms of the court order issued on 17/03/03 that the matter would not be re-instated without the leave of the court.

The applicant must therefore give a valid and reasonable explanation why it did not appear on 17/03/03.

The present application is founded upon the supporting affidavit of Sakhele Hlophe and the confirmatory affidavit of Jabulani Maseko. There is no Founding Affidavit by the applicant.

Mr. Jabulani Maseko in his Confirmatory Affidavit says that he was the Attorney handling the matter during the relevant period. He says he was not aware that the matter was set down for trial on 17/03/03. He says on 03/03/03 he had filed a request for a date of hearing.

The request for the date of hearing was indeed filed of record. It was filed in court on 07/03/2003. There is evidence that it was received by the respondent's

Attorneys on 03/03/03. It is not clear what happened thereafter. There is no evidence that the date was allocated by the court's Registrar. It is not known to the court on what basis was the matter placed before the court on 17/03/03.

From the court record, it seems that both parties were not aware that the matter was on the roll on 17/03/03 because there was also no appearance by the respondent.

If indeed the date of 17/03/03 was allocated by the court's Registrar, there is no indication that the parties were informed about it. The respondent in its papers does not state or make any allegation that the applicant was aware that the matter had been enrolled for the 17th March 2003, and that therefore the applicant was in willful default.

The court therefore will come to the conclusion that the explanation given why the applicant did not appear on the 17th March 2003 is valid and reasonable. It is therefore accepted by the court.

The court will accordingly grant the application in terms of prayer 1 thereof.
No order as to costs. The members agree.

N. NKONYANE

ACTING JUDGE- INDUSTRIAL COURT