

IN THE INDUSTRIAL COURT OF SWAZILAND

HELD AT MBABANE

CASE NO. 306/08

In the matter between:

**THE MINISTRY OF JUSTICE &
CONSTITUTIONAL AFFAIRS**

1ST Applicant

**THE CHAIRMAN, CIVIL SERVICE
COMMISSION**

2nd Applicant

THE SWAZILAND GOVERNMENT

3rd Applicant

**THE MINISTRY OF HEALTH & SOCIAL
WELFARE**

5th Applicant

and

FUTHI KUHLASE-MDLULI

Respondent

CORAM:

P. R. DUNSEITH : PRESIDENT

JOSIAH YENDE : MEMBER

NICHOLAS MANANA : MEMBER

FOR APPLICANT : S. V. MDLADLA

FOR RESPONDENT : J. MAGAGULA

**JUDGEMENT ON APPLICATION FOR THE
STAY OF EXECUTION – 2/02/09**

1. The Applicants have applied for the stay of execution of the judgement of the Industrial Court issued on the 6th October 2008, pending determination of the appeal which the Applicants noted against such judgement on the 15th October 2008.
2. The Respondent opposes the application, and her counsel has raised a legal issue which cuts at the root of the application.
3. In terms of Rule 21 (1) of the Industrial Court of Appeal Rules, 1997, the Applicants as appellants were required within one (1) month of the date of noting of the appeal, to lodge a copy of the record on appeal with the Registrar of the Industrial Court for certification.
4. It is common cause that the Applicants have not yet lodged a copy of the record with the Registrar, notwithstanding the elapse of three (3) months since the appeal was noted.
5. Rule 21 (4) of the Industrial Court of Appeal Rules, 1997 provides:

“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.”
6. Rule 16 (1) permits the Judge President or any judge of the Industrial Court of Appeal designated by him to extend any time

prescribed by the Rules, on application made.

7. The Applicants have not applied for, nor been granted, an extension of the time prescribed for lodging of the record for certification. As matters presently stand, the appeal is deemed to be abandoned.
8. The legal point raised by the Respondent is fatal to the application. The court cannot stay execution of its judgement pending determination of an appeal which has been abandoned.
9. The application is dismissed with costs.

The members agree.

PETER R. DUNSEITH
PRESIDENT OF THE INDUSTRIAL COURT