

# IN THE INDUSTRIAL COURT OF SWAZILAND

HELD AT MBABANE

CASE NO. 192/09

In the matter between:

SANDILE MAZIYA

APPLICANT

And

L.S.W ENGINEERING

RESPONDENT

CORAM:

NKOSINATHI NKONYANE DAN

JUDGE

MANGO GILBERT NDZINISA

MEMBER

MEMBER

*i Oh* API-UCANT FOR  
RESPONDENT

EL TFWALM M.  
DLAMINI

## JUDGEMENT 30.06.09

[1] The applicant applied to the court for the registration of a default judgement entered against the respondent by a CMAC Commissioner on 16.03.2009.

[2] The application is opposed by the respondent. The respondent stated in its answering affidavit that it was not in wilful default but that it failed to reach CMAC offices in Siteki on time, and it arrived at 2:30 p.m. after the default judgement had been granted.

[3] What is striking from the respondent's papers is that the respondent does not state what steps it took thereafter to address the situation that it was facing. In terms of *Section 81(9) of the Industrial Relations (Amendment) Act No.3 of 2005* the respondent has fourteen days within which it can apply to the Executive Director of

CMAC to have the default judgement rescinded. The respondent did not do that despite the fact that it got to know about the default judgement on the very same day that it was granted on 16.03.2009.

- [4] The application for rescission of the arbitrator's default judgement can be done only within the fourteen days specified by the Act. The CMAC Executive Director is not empowered under the Act with any authority to condone a late filing of the application for rescission.

See: **Stanford Mhlanga v Milito Investments**

**Case No. 202/2007 (I.C.)**

**VIP Protection Services v Nkosinathi**

**Dlamini Case No. 694/2006 (I.C.)**

- [5] On the papers before the court however, the respondent stated that it has a bona fide defence to the applicant's claim. Taking into account all the circumstances of the case therefore the court will defer the passing of the judgement for two weeks to allow the respondent to take any steps it deems appropriate and provide proof to the court that it has done so failing which the order sought by the applicant will be granted.

- [6] The court will accordingly make the following order;

(a)The passing of the judgement is deferred until 15/07/09 and the matter is postponed until that date, (b)

No costs order is made.

The members agree.

**NKOSINATHI NKONYANE**

**JUDGE OF THE INDUSTRIAL COURT**