



IN THE INDUSTRIAL COURT OF APPEAL OF ESWATINI
JUDGMENT

CASE NO. 12/19

HELD AT MBABANE

In the matter between:

SWAZILAND ELECTRICITY BOARD

APPELLANT

And

MOSES SHONGWE

RESPONDENT

Neutral Citation: *Swaziland Electricity Board V Moses Shongwe [12/19]*
[2019] SZIC 14 (16 October 2019)

Coram: M.R. Fakudze AJA, T. DLAMINI AJA, M. LANGWENYA AJA

Heard: 3 October 2019

Delivered: 16 October 2019

Summary: *Labour law-Practice and Procedure-Time for noting of appeal-Appeal to be noted within three months of judgment-Court record to be filed out of time and contrary to Rule 21(1) of the Industrial Court of Appeal-Appeal deemed to have been abandoned. No application for condonation for late filing of Court record made no application for extension of time in terms of Rule 16 - Appellant to pay costs.*

JUDGMENT

JUSTICE M.S. LANGWENYA

Background

[1] On 24 April 2019 the Industrial Court delivered judgment in favour of the Respondent. The Industrial Court ordered the appellant to reinstate the respondent with effect from 3 June 2019 and to compensate him with a twelve months' salary for unfair dismissal. The appellant noted an appeal against the judgment of the Industrial Court on 22 May 2019. On 29 May 2019, the appellant further moved an urgent application in the main, seeking an order staying the execution of the Court Order of 24 April 2019.

[2] The trial Court dismissed the application for stay of execution on 7 August 2019.

[3] The appellant noted an appeal on 22 May 2019, but did not file the Court record within a month of the date of hearing as stipulated by the Rules of the Industrial Court of Appeal. The appellant only filed the Court record on 22 August 2019-two months out of time. The filing of the court record out of time was neither preceded by nor was it accompanied by an application for condonation for late filing of the court record.

[4] On 3 September 2019 the respondent filed a notice to raise objection to late filing of the Court record. This notice was preceded by a letter of 1 July 2019 where the respondent reminded the appellant to file the Court record by 9 July 2019. The appellant neither responded to respondent's correspondence nor did it file the Court record by 9 July 2019.

[5] In terms of Rule 21(1) of the Industrial Court of Appeal Rules, the appellant is required to prepare the Court record and lodge a copy thereof with the Registrar of the Industrial Court of Appeal for certification within one month of the date of the noting of the appeal. If the appellant fails to submit the record for certification within this period, the appeal shall be deemed to have been abandoned.

[6] The appellant did not file an application for condonation for late filing of the Court record nor did it proffer reasons for failing to do so. Needless to point out, appellant's non-compliance with the rules in this instance is glaring, flagrant and inexplicable and deserves censure by this Court. It is trite that in cases of flagrant breaches of the Rules, especially where there is no acceptable explanation

therefor, the indulgence of condonation even if it was made may be refused whatever the merits of the appeal are; this applies even where the blame lies solely with the attorney¹.

[7] Since the appellant failed to:-

7.1 Comply with Rule 30 and provide the Court record within the prescribed time limits;

7.2 Apply for condonation for late filing of the Court record and gave no reasons for failing to do so; and

7.3 Made no application for extension of time in terms of Rule 16, the respondent was entitled to regard the appeal to have been abandoned in terms of Rule 30(4).

[8] As no application for a postponement of the matter to the next session was made coupled with the fact that no sound reasons were given why a substantive application for condonation was not made as well as that there was no sufficient cause set out on why the appeal could still be heard notwithstanding it having been deemed abandoned in terms of the Rules, this Court could not postpone the matter to the next session.

[9] Accordingly, the following order is made:

¹ *PE Bosman Transport Works Committee & Another v Piet Bosman Transport (Pty) Ltd* 1980 (4) SA 794(A) at 799D-H.

The appeal is deemed abandoned and accordingly dismissed.

The appellant are to pay costs of the respondent.

M. S. LANGWENYA

ACTING JUSTICE OF APPEAL

I agree: M. R. FAKUDZE

ACTING JUSTICE OF APPEAL

I agree: T.L. DLAMINI AJA

ACTING JUSTICE OF APPEAL

For the Appellant: Mr S Dlamini of Musa Sibandze Attorneys

For the Respondent: Mr H. Nhleko of Dunseith Attorneys