



costs was made.

The appellants have noted an appeal against this decision and the question arises whether the appeal has been properly noted.

The case of Sparks vs David Polliack and Company (Pty) Ltd 1963 (2) 491 it is authority that a default judgment under rule 55(2) of the Magistrate Court Act of South Africa, becomes final and therefore appealable when it is no longer rescindable. The headnote recites that a judgment had been given in default in terms of rule 55(2) of the Magistrate Courts rules and there was nothing in the record on appeal to show that an extension of time within which to have the judgment rescinded had been refused under rule 53(5) It is further held that the judgment is not in fact a

3

final judgment and it is not appeal able under Section 8(3)(2) of the Magistrate Court rule 32 of 1944.

A similar situation obtains in the present case. The judgment or decision of the Industrial Court is a judgment by default having been given in the absence of one of the parties. There is a remedy available in court in terms of the rules in the court a quo and that is to apply for rescission of the judgment. If such application is now out of time it is possible to have the period extended. Until this is done the appeal to this court it is premature and based on a judgment, which is not final. The Appellant's have failed to avail themselves of the remedies provided for in the rules of the court a quo

Accordingly the appeal in this case must be dismissed, We make no order as to costs.

SAPIRE, JP

MATSEBULA, JA

MAPHALALA, JA