

IN THE INDUSTRIAL COURT OF APPEAL OF ESWATINI

Case No. 09/2020

In the matter between

ATTORNEY GENERAL

Appellant

and

**NATIONAL PUBLIC SERVICE AND
ALLIED WORKERS UNION (NAPSAWU)**

Respondent

NEUTRAL CITATION: *Attorney General v National Public Service and Allied Workers Union (NAPSAWU) [2021] (09/2020) SZICA (10 August 2021)*

CORAM: S. Nsibandze JP, J.M. van der Walt JA and N. Nkonyane JA

HEARD: 14/06/2021

DELIVERED: 10 AUGUST 2021

Summary

Appeal - deemed to abandoned in terms of Rule 21(4) where record submitted or resubmitted for certification out of time, unless an application for extension in terms of Rule 16 had been made - no other any occurrence other than such application for extension, can serve to ward off the relevant provision deeming the appeal to have been abandoned - appeal thus deemed to have been abandoned, can only be revived by way of a meritorious application for condonation

JUDGEMENT

VANDERWALT,JA

[1] The background facts, in a nutshell, are that the Trading Account of the Central Transport Administration (CTA) was closed in terms of a Circular No 1 of 2020/2021 and the current respondent trade union, representing CTA workers, instituted proceedings in the Court *a quo* against the Principal Secretaries of the Ministries of Public Works & Transport, Public Service and Finance respectively, as well as against the Accountant General: Treasury and Store Department, further citing the current appellant in his capacity as Governmental legal representative.

- [2] The Respondent as the applicant *a quo* sought an order amongst others declaring the relevant Circular to be of no legal force or effect and directing consultations between the parties regarding the transformation of CTA into a parastatal. The proceedings culminated in a judgment in terms of which it was ordered, amongst others, that the Circular be stayed pending consultations.
- [3] The Appellant, being dissatisfied by the outcome, noted an appeal, the gravamen of which was that the Comt *a quo* erred and misdirected itself in refusing to stay the proceedings, in refusing to refer the issue concerning the nature of the powers exercised by the Principal Secretary in the Ministry of Public Works and Transport, to the High Court, and in suspending the operation of the Circular pending consultation between the Government and the respondent.
- [4] The post-judgment chronology of filings can be summarised as follows, with reference to the applicable Rules of this Comt or sections of the Industrial Relations Act, 2000 (the "Act"):

DATE	ITEM	PROVISION	COMMENT
23.9.2020	Notice of Appeal	Section 19(3): Within 3 months of date of decision	Filed on same day as Judgment i.e. within statutorily prescribed period
23.10.2020	Notice of Amendment of Notice of Appeal	Rule 12: The Industrial Comt of Appeal may allow an amendment on such terms as it may deem fit	No formal application for such leave filed
25.11.2020	Appeal Record	Rule 21(1): To be filed within 1 month of lodging appeal for certification by Registrar Rule 21(4): Failure to submit or resubmit for certification,	Record only filed some 2 months after lodging of appeal and no application for extension or condonation in respect thereof

		subject to <u>Rule 16(1)</u> i.e. application for extension for " <i>good and substantial reasons</i> " appeal shall be deemed to be abandoned Rule 17: Condonation for non-compliance with any of the Rules, " <i>for sufficient cause shown</i> "	
23.4.2021	Appellant's Heads of Argument	Rule <u>22(1)</u> : No later than 14 days before hearing of appeal	Matter initially set down for 4.5.2021 and Heads filed out of time; no application for condonation
23.4.2021	Appellant's application condonation incomplete record	Rule 17 above	Only 4 omitted pages concerned; date of filing of record not addressed
27.4.2021	Respondent's Heads of Argument	Rule <u>22(3)</u> : No later than 4 days before hearing of appeal	Filed in time. Issue is taken therein with pertinent affidavits and notices not having been included in record
28.4.2021	Respondent application for leave to produce fresh evidence in respect of post- judgment developments		(In view of the ultimate finding below this aspect needs not be considered any further)

- [4] It is immediately apparent that the Record had not been filed within the prescribed period and that there was no application for either an extension or for condonation. On a strict interpretation of Rule 21(4) therefore, the appeal is deemed to be abandoned, which was the core submission on behalf of the respondent, accompanied by a complaint of an incomplete record (including the omission of papers relating to the stay application that had been refused and which is referred to in the Notice of Appeal.)

- [5] Mr Viliakati, on behalf of the appellant, vigorously urged this Court to hold that the filing of the Notice of Intention to amend the Notice of Appeal, resulted in the proverbial ticking of the clock being interrupted and that the period for filing had to be recalculated afresh as from date of filing of such notice. In the premises, it was contended, an application for condonation was not necessary.
- [6] This Court was not provided with, and is unaware of any applicable authority in support of such a contention. Nor do the Rules, either in general or specifically in Rule 21, contain any *provisio* to the effect contended for on behalf of the appellant.
- [7] Extension of the march of time towards a due date for filing or lodging or the performance of any other stipulated act, can be achieved by way of a successful Rule 16 application prior to such due date. If, in a particular case, an intention to amend a notice of appeal would constitute good and substantial reasons for such an extension, the appellant can make application accordingly and will then not fall foul of Rule 21(4).
- [8] Consequently, this Court declines to hold that any occurrence other than an application for extension, can serve to ward off the relevant provision deeming the appeal to have been abandoned.
- [9] Even were Mr Viliakati's argument correct, the record was still filed several days out of time. In addition, the record was incomplete; an


appeal cannot be decided properly unless all the relevant material has been placed before Comi.

[10] It then follows, absent an application for extension and in terms of Rule 21(4) that the appeal is deemed to have been abandoned and absent an application for condonation, that the appeal had not been revived.

[9] In the circumstances, all the other issues arising from the noting of appeal need not be considered for current purposes.

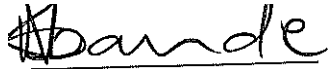
[10] Accordingly, the following order is made:

The appeal is dismissed, with no order as to costs.



J.M. VAN DER WALT
JUSTICE OF APPEAL


I agree



S. NSIBANDE
JUDGE PRESIDENT

¹ See *Eswatini National Trust Commission v Swaziland National Trust Commission Staff Association and Another [2021] (12/2020} SZICA 3 {10 August 2021)*

I agree



M. NKONYANE
JUSTICE OF APPEAL

For the Appellant: Mr. M.M. Vilikati assisted by Mr M Manana,
Attorney General's Chambers

For the Respondent: Mr. M. Ndlangamandla of MLK Ndlangamandla
Attorneys