IN THE COURT OF APPEAL OF SWAZILAND

APPEAL CASE NO.27/98

IN THE MATTER BETWEEN:

AFRI-CRAFT (PTY) LTD APPELLANT

VS

TUBECOM AFRICA (PTY) LTD 1st RESPONDENT

THE DEPUTY SHERIFF (MANZINI) 2nd RESPONDENT

CORAM : LEON J A

: STEYN J A

: TEBBUTT J A

FOR THE APPELLANT : MR. MAVUSO

FOR THE RESPONDENTS :

JUDGEMENT

Steyn J A:

This is an application for leave to appeal against a judgement of the High Court delivered on the 20th July 1998. The application was dismissed with costs at the time of the hearing for the following reasons: -

The applicant applied for:

1) The condonation of applicant's delay in filing the Court record in terms of Rule 30(1) of the Rules;

2) The condonation of the applicant's delay in filing the heads of argument in terms of Rules 31(1) of the Rules.

When the matter was called the learned presiding Judge pointed out to Counsel that the application could well be fatally flawed. This was because there was no evidence or even an allegation that the appellant had a reasonable prospect of success in respect of any appeal he wished to prosecute.

Mr. Mavuso who appeared for the applicant conceded that this requirement was both necessary and absolute. He said however, that, in the particular circumstances of this case, the Court should come to his assistance. Applicant's former attorney said he had only recently been seized of the matter and that no opportunity existed for the applicant to acquaint himself with the facts of

the matter so as to be able to assert that reasonable prospect of success existed.

The answer to this plea ad miscordiam is to be found in the applicant's own papers. He says that the first time he knew of the judgement against him was on the 2nd of September 1998, when a writ of execution was issued and served pursuant to the judgement I have referred to. His then attorneys handed the judgement to him on the 3rd September. Applicant requested an opinion as tot he prospects of success in an appeal. He was advised by his attorneys of record, that is his present legal advisors, that they would have to have obtained copies of the pleadings and a transcript of the record, "in order to fully access the prospects of success on appeal."

It follows that for close to four weeks, applicant and his legal advisors had an opportunity to obtain either the record itself, the exhibits (the matter significantly determined on written documentation) and/or other evidential material via applicant's former attorneys in order to enable them to be able to "more fully access" his prospects of success.

No explanation has been forthcoming why this was not done. It is therefore no answer to seek to remedy the serious deficiency in these proceedings for applicant to refer to and

seek to rely upon the negligence of his former attorneys. It is true that they failed to advise him of the fact that the judgement had been given against his company on the 20th July. He was, however, well aware as from the 2nd of September, that judgement had been given against him and took no steps in order to determine whether or not there were prospects of success on appeal. Moreover, he failed to use the time available to him to evaluate his prospects of success in any manner whatsoever.

I should also point to the fact that in terms of the provisions of Rule 16(1) the applicant could have applied to the Judge President of the Court of Appeal or any Judge of the Court of Appeal for an extension of the time prescribed by the Rules. He also failed to do so.

In these circumstances, it was clear that:

1) There is no evidence or averment that applicant has reasonable grounds for success on appeal.

2) There is no acceptable explanation as to why such allegation or evidence was not placed before us.

For these reasons we held that the application was fatally flawed and it was accordingly refused, with costs.

J.H. STEYN J A

I agree:

R. N. LEON J A

And so do I:

P.H. TEBBUTT J A

Delivered in open Court on 30th September 1998.

IN THE COURT OF APPEAL OF SWAZILAND

CRIMINAL APPEAL NO.23/96

In the matter between:

MANDLA PETROS HLATSHWAYO

CAROL BHEKITHEMBA DLAMINI

VS

THE KING

CORAM : SCHREINER J A

: LEON J A

: STEYN J A

FOR THE APPELLANTS : BOTH IN PERSONS

FOR THE CROWN : MR NGARUA

JUDGEMENT

Steyn J A:

This is an application for leave to appeal by the two applicants. They have been charged and convicted of the theft of a white BMW sedan. The Crown alleged that they had falsely represented to the complainant that they were police officers who had been sent to come and collect the vehicle which was alleged to have been stolen.

They both pleaded not guilty to this charge but after evidence was led they were convicted in the Magistrate's Court. They appealed to the High Court but their appeal was dismissed also in the High Court.

In July 1997 they filed an application which was headed 'notice of appeal' in which they set out various grounds upon which they sought leave to appeal to this Court. They have both of them today addressed us by way of oral argument in support of this application. Being laymen a very

substantial number of the issues raised by them were hardly relevant in relation to the question of the determination of their guilt. This relates particularly to the admissibility of certain documentation and the availability of certain documentary evidence.

These submissions which they have made are entirely without merit in - so - far - as the principle issue is concerned, that is, whether they were correctly identified as the persons who made the representation to the complainant. On this issue there was ample evidence inter alia by PW1 and his wife identifying the two of them as being the persons that made the representation.

The first applicant did give evidence but his evidence amounted to a bare denial of the evidence of the Crown witnesses. The second applicant did not give evidence at all. The evidence was carefully evaluated by the Magistrate in the court of first instance. He had the opportunity of seeing the witnesses and he had no hesitation in accepting the Crown evidence and rejecting the evidence of the first applicant.

We have no reason to disagree with those findings. It is our view that the application for leave to appeal in - so - far - as the conviction is concerned is without merit. The application for leave to appeal is accordingly refused.

J. H. STEYN J A

I agree:

W. H. R. SCHREINER J A

I agree:

R.N. LEON J A

Delivered on 22nd April 1998.