

IN THE COURT OF APPEAL OF SWAZILAND

APPEAL CASE NO.41/2001

In the matter between:

JONCON (PTY) LTD APPELLANT

AND

BARLOWORLD CAPITAL (PTY) LTD RESPONDENT

CORAM BROWDE JA

STEYN JA

ZIETSMAN JA

JUDGMENT

Steyn JA:

In this matter the High Court granted an order finally winding up the appellant. This order was issued out of the High Court on the 9th of October 2001. A notice of appeal was filed on the 15th of October 2001. The sole ground of appeal reads as follows:

"The learned Chief Justice erred in finding that the Respondent had upon a balance of probabilities discharged the onus that the appellant was unable to pay its debts".

The record was presented for filing by the appellant on the 25th day of October 2001 and was duly certified by the registrar on the 31st of October 2001.

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The appellant failed to file his heads of argument timeously or at all. No application for condonation or any affidavit explaining non-compliance was filed. The appellant did not appear when the Roll of the Court of Appeal was called on Monday the 27th instant. At the Court's request counsel for the respondent contacted appellant's attorneys, Messrs. Bheki Simelane and Company, to determine their altitude concerning the prosecution of the appeal.

A fax was duly sent to the appellant's attorneys firm. It reads as follows:

"RE: JONCON (PTY) LTD - BARLOWS CENTRAL FINANCE CORPORATION (PTY) LTD - t/a BRL LEASING

At the Roll Call of the Court of Appeal this morning, there was no appearance on behalf of the appellant, your client. This office has not received a Notice of Withdrawal or any form of notification pertaining to the future cause of this appeal. The Honourable, Mr. Justice Browde, has requested the Respondent's legal representatives to ascertain from you as to what the situation is and to convey same to the Court.

Kindly advise the writer hereof whether or not you are proceeding with the Appeal.

If no response has been received from you by close of business on Tuesday 28th May 2002, it shall be accepted that you have abandoned the Appeal and that you are tendering costs as set out above."

To this fax there was no reply. When the appeal was called this morning there was no appearance on behalf of the appellant.

This Court has on many occasions in the past, and more particularly also at the last session of the Court of Appeal, cautioned counsel and attorneys that this kind of conduct will not be tolerated. Should practitioners treat litigants and the Court in this cavalier and unprofessional manner we made it clear that appropriate orders as to costs could well be made.

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This is such a case. The appeal was without merit, it was noted purely for purposes of delaying the proceedings. An appropriate order would therefore be the following:

The appeal is struck from the roll with costs, including costs of counsel. Such costs are to be paid de bonis propriis by the firm of Bheki G. Simelane and Company. This order is to be served on the appellant in the person of its liquidator and on Messrs. Bheki Simelane, respondent's attorneys.

J.H STEYN JA

I AGREE

J. BROWDE JA

I AGREE

N.W.ZIETSMAN

Delivered in open Court on this 29th day of May 2002.

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