

**IN THE SUPREME COURT OF SWAZILAND**

**APPEAL CASE NO.5/2006**

**In the matter between:**

**REX VS  
ROBERT NZIMA & 15 OTHERS**

**CORAM**

**STEYN JA  
TEBBUTT JA  
BANDA JA**

**FOR THE CROWN  
FOR THE RESPONDENTS**

**MS. MUMCY DLAMINI  
MAZIYA/MAHLALELA**

**JUDGMENT**

## SUMMARY

Crown failing to comply with the provisions of the rules of the Court of Appeal (now the Supreme Court) - such failure flagrant, unexplained and no condonation sought - Crown officers should act in an exemplary manner and in so doing support this Court in its efforts to order due process - failure to do so in serious cases - particularly where the rights of others are affected to be visited with appropriate sanctions - appeal struck from the roll.

## Stevn JA

[1] When this matter was called, this Court struck the appeal from the roll.

The reasons we did so are the following.

[2] The 16 respondents were apprehended on suspicion of involvement in acts of a treasonable nature. They were subsequently charged with high treason. They applied for and were granted bail by the High Court. The Crown forthwith gave notice of an intention to appeal. However, no appeal was actually noted and no grounds of appeal filed until some six months after the delivery of judgment. The judgment was delivered on the 10<sup>th</sup> of March 2006 and the notice of appeal was filed on the 29<sup>th</sup> of September 2006. It is clear from the rules of the Court of Appeal that the appellant should have

filed a notice of appeal within 6 weeks of the judgment. (See rule 3(1)).

Moreover such notice should be in the form prescribed by Criminal Form 1

which provides for service of such notice on the respondents. At the time of

the hearing of the matter on the 1<sup>st</sup> of November 2006 no such service of the

notice of

appeal had been effected upon the legal representatives of the respondents 1

to 16. Moreover the application for bail and the affidavits in support thereof

were not part of the papers purporting to be the full record of the

proceedings. A complete record should have been filed within three months

after the notice of appeal had been filed.

[3] To compound this non-compliance with the rules, the Crown failed to

tender any explanation why its wide-ranging and substantial non-compliance

had occurred. When questioned by the Court why this was the case, Crown

counsel asserted that she had understood the matter would be postponed! I

may add that no notice of any application for a postponement had been

received by the Court. There is a unacceptable assumption by practitioners

that postponements can be had for the asking and granted for counsel's

convenience. Practitioners are once again cautioned that this assumption is

unfounded and postponements are only to be granted on good cause shown -

preferably on affidavit.

[4] The Court indicated to counsel for the Crown that it was of the view that it (the Crown) should set an example of good criminal practice and in so doing assist this Court to maintain standards of efficiency that speaks of a commitment to service of excellence. Delays are endemic in this jurisdiction and are destructive of the delivery of justice. A failure to comply with the rules of court will, in appropriate cases, attract sanctions by this Court.

[5] It was by reason of the extensive and unexplained disregard of the rules of court that we struck the matter from the roll.

**J.H. STEYN**  
Judge of Appeal

I AGREE

P.H. TEBBUTT  
Judge of Appeal

I AGREE

R.A. BANDA  
Judge of Appeal

Delivered in open court on this 15th November 2006.