

**IN THE SUPREME COURT OF SWAZILAND**

**APPEAL CASE NO.51/2008**

**In the matter between:**

**CHIEF JUBIPATHI MAGAGULA**

**APPELLANT**

**VS**

**ROBERT MATSEBULA**

**1<sup>st</sup> RESPONDENT**

**SISANA MATSEBULA**

**2<sup>nd</sup> RESPONDENT**

**CORAM**

**BANDA CJ**

**EBRAHIMJA**

**MAGID AJA**

**FOR THE APPELLANT**

**MR. S.C.**

**DLAMINI**

**FOR THE RESPONDENTS**

**MR. MAGONGO**

**JUDGMENT**

## **MAGID AJA:**

[1] In this matter:

[1.1] the appeal was noted on 14<sup>th</sup> October, 2008;

[1.2] in terms of the Rules, the record had to be filed with the

Registrar of this Court within a period of two months,

which expired at midnight on 13<sup>th</sup> December,

2008; [1.3] the record was in fact filed with the

Registrar on 27 March 2009 and served on the respondents on the day

the Appeal was heard - 13<sup>th</sup>

<sup>th</sup> May 2009; [1.4] the appellant's heads of argument were dated 27<sup>th</sup> March

2009 but only served on 23<sup>rd</sup> April 2009; [1.5] no application for condonation of the late filing of the record or the lateness of the heads of argument was ever made.

[2] Before us, Mr. Magongo who appeared for the respondents, objected *in limine* to the appeal proceeding on the ground that condonation for the appellant's procedural defects was necessary and had not even been sought.

[3] Mr. S.C. Dlamini, who appeared for the appellant, sought to answer Mr. Magongo's complaint with the submission that the respondents had not been prejudiced because the proceedings in the Court *a quo* having been

brought on motion, they were in possession of all the papers on which the appeal was based.

[4] That submission is clearly wrong and for these reasons, the following order was made:

1. The appeal is struck off the roll.
2. The appellant is given leave at the next session of this Court to bring a proper application for condonation of his non-compliance with the Rules.
3. The appellant is ordered to pay the respondents' wasted costs.



ACTING JUDGE OF APPEAL

P.A.M. MAGID



R.A. BANDA

CHIEF JUSTICE

A.M. EBRAHIM -----

JUDGE OF APPEAL Judgement

delivered in open court on the 18th day of May 2009.