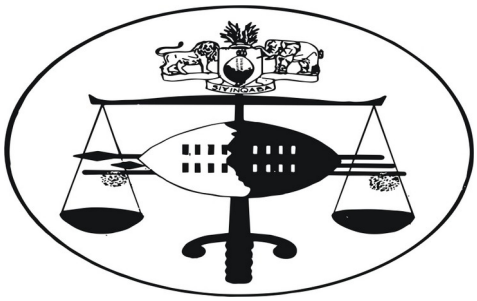

IN THE SUPREME COURT OF SWAZILAND

HELD AT MBABANE

CIVIL APPEAL NO.2/2010

CITATION: [2010] SZSC 3

In the matter between:

THOKOZILE DLAMINI **APPELLANT**

AND

CHIEF MKHUMBI DLAMINI **FIRST RESPONDENT**

THE COMMISSIONER OF POLICE SECOND RESPONDENT

CORAM	**:**	**RAMODIBEDI, CJ**
	:	**EBRAHIM, JA**
	:	**DR TWUM, JA**
HEARD	**:**	**11 NOVEMBER 2010**

DELIVERED : 30 NOVEMBER 2010

SUMMARY

Civil appeal – Flagrant disregard of the Supreme Court Rules – Appellant failing to lodge the record of proceedings timeously – Rule 30 of the Supreme Court Rules – No application for condonation made – Appellant further failing to file heads of argument timeously – No prospects of success on appeal – Appeal deemed to have been abandoned and accordingly dismissed with costs.

JUDGMENT

RAMODIBEDI, CJ

[1] The first respondent, as applicant, and acting in his capacity as the Chief of Nkiliji Chiefdom in the Manzini district sought and obtained an order in the High Court, albeit in a watered down form, interdicting the appellant from burying her brother, Sikelela Clement Dlamini ("the deceased") at any place within the Nkiliji area other than at the cemetery demarcated by the community as "Emathuneni kaZwane". In a commendable approach to avoid any uncertainty, the learned Judge *a quo* (Hlophe J) specifically ordered that

the appellant and those acting at her behest were at liberty to bury the deceased "at any other place where they can lawfully do so in Swaziland."

[2] The appellant is aggrieved by the court *a quo's* order in question. Hence this appeal.

[3] It is common cause that the court *a quo* delivered judgment in the matter on 22 December 2009. The appellant filed a notice of appeal on 13 January 2010. In terms of Rule 30(1) of the Court of Appeal Rules, the appellant was obliged to file the record of proceedings within 2 months of the date of noting of the appeal. The Rule in question reads as follows:-

> *"30. (1) The appellant shall prepare the record on appeal in accordance with sub-rules (5) and (6) hereof and shall within 2 months of the date of noting of the appeal lodge a copy thereof with the Registrar of the High Court for certification as correct."*

[4] It is further common cause that the appellant only filed the record of proceedings on 8 April 2010. She was, therefore, out of time by two (2) months.

[5] Now, Rule 30(4) provides as follows:-

> *"(4) Subject to Rule 16(1), if an appellant fails to note an appeal or to submit or resubmit the record for certification within the time provided by this rule, the appeal shall be deemed to have been abandoned."*

[6] Relying on Rule 30(4), Mr. Zwane for the first respondent has accordingly argued forcefully in this Court that the appeal must be deemed to have lapsed. It is his contention that the appeal falls to be dismissed as such.

[7] Astonishingly, the appellant has not bothered to apply for condonation of the late filing of the record in terms of Rule 17 of the Rules of this Court. It is thus difficult to resist the conclusion that the appellant has treated the Rules of this Court with disdain. There has been a

flagrant disregard of the Rules. No attempt has been made to explain the appellant's default. Thus, for example, the heads of argument were typically filed out of time.

[8] As I had occasion to observe in a similar situation in the case of **Johannes Hlatshwayo v Swaziland Development and Savings Bank and Others, Civil Appeal No.21/06**, this Court has on numerous occasions warned that flagrant disregard of the Rules of Court will not be tolerated. It bears repeating what I said in paragraphs [16] – [19], namely:-

> *"[16] Similarly, it is evident in my view that the attitude evinced by the appellant in the instant case is that the Rules of this Court are unimportant and fall to be disregarded with impunity. It is thus necessary to disabuse litigants of such attitude lest the justice system in this jurisdiction falls into disrepute. To make matters worse, the appellant has not even bothered to make an application for condonation of all of the breaches of the Rules as fully set out above. He has thus treated the Court in a cavalier manner.*

[17] It requires to be stressed that the whole purpose behind Rule 17 of the Rules of this Court on condonation is to enable the Court to gauge such factors as (1) the degree of delay involved in the matter, (2) the adequacy of the reasons given for the delay, (3) the prospects of success on appeal and (4) the respondent's interest in the finality of the matter.

[18] ...

[19] In my view, the peculiar circumstances of the instant case as fully outlined above cry out for finality of litigation in the interest of justice. I discern the need to put an end to the whole saga."

[9] There is a further consideration in the matter. It is this. The appellant simply has no reasonable prospects of success on appeal. This is largely so because the first respondent's material averments that he is the lawful

Chief of the area where the appellant purported to bury the deceased were met with no more than a bare denial. Nor could the appellant seriously challenge the ruling by His Majesty the King, annexure "AG2," to the effect that the area in question falls under the first respondent's Chiefdom. It is instructive to note that annexure "AG2," which is on the letterheads of His Majesty the King, was confirmed by Samuel Mkhombe who was admittedly a member and Secretary of the Swazi National Council Standing Committee. In effect, he confirmed that the area in question falls under the first respondent's Chiefdom.

[10] Similarly, the following material averments made by the first respondent were not challenged and must, therefore, be accepted as correct, namely:-

(1) That as Chief of the area in question the first respondent is 'seized with jurisdiction to make rules and orders to be obeyed by all my subjects including the respondent.' He is mandated and indeed authorised by the Constitution to enforce custom and traditional practices over members of the community. In particular, he is mandated

and authorised by the Swazi Administration Order 1950 to administer and maintain order and good governance among Swazis residing in his Chiefdom with a view to advance and promote their welfare.

(2) That some 10 years ago around 2000 a meeting was held to demarcate an area where residents of the area would be buried. This area was identified as Ka-Zwane burial site. Following a resolution of the community, the first respondent and his inner council issued an order to all the residents of his Chiefdom that henceforth funerals would be held in the demarcated burial site in question. The community has complied with the first respondent's order since 2000.

(3) That the appellant 'continuously defied the said order with contempt from its inception', thus outraging and shocking the community of the first respondent's Chiefdom.

[11] Now, following the celebrated case of **Setlogelo v Setlogelo 1914 AD 221** at 227, it is well-established that the pre-requisites for an interdict are a clear right, injury actually committed or reasonably apprehended and the absence of similar protection by another ordinary remedy. See also **V.I.F. Limited v Vuvulane Irrigation Farmers Association (Public) Company And Another, Civil Appeal Case No.30/2000**.

[12] On a proper consideration of the facts as outlined above, I consider that the first respondent satisfied all the prerequisites for an interdict. It is common cause that he is empowered to make rules and orders to be obeyed by all his subjects including the appellant.

[13] The appellant's complaint relating to jurisdiction based on s151(8) of the Constitution is in my view devoid of merit. It was not her case in the first place. Indeed the point was raised by the court *a quo mero motu*. It now appears that the appellant feels she was thrown an unexpected lifeline. I do not agree.

[14] When all was said and done, the court *a quo* came to the conclusion that a beneficiary of a right created by

the Ingwenyama's decision is not precluded from enforcing such right before the High Court. I am prepared to accept the correctness of this principle in the circumstances of this case, bearing in mind that all that the first respondent sought and obtained was an interdict to enforce his right emanating from the Ingwenyama's decision. It will be noted for that matter that in her twelfth ground of appeal the appellant correctly acknowledges the fact that an interdict was "the very basis of the application before the court *a quo*." That being the case, it cannot be seriously maintained that the High Court had no jurisdiction in the matter.

[15] It follows from these considerations that the court *a quo's* order of interdict cannot be faulted.

[16] In the result the appeal is deemed to have been abandoned and is accordingly dismissed with costs.

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M.M. RAMODIBEDI

CHIEF JUSTICE

I agree : _____

A.M. EBRAHIM

JUSTICE OF APPEAL

I agree : _____

DR. S. TWUM

JUSTICE OF APPEAL

FOR APPELLANT :

FOR RESPONDENT: