



**IN THE SUPREME COURT OF SWAZILAND**

**JUDGMENT**

Civil Appeal Case No.90/12

In the matter between:

**PRISCILLA DLAMINI**

**Applicant**

**vs**

**HUNTER SHONGWE**

**1<sup>st</sup> Respondent**

**OUPA LAPIDOS N.O.**

**2<sup>nd</sup> Respondent**

**WILSON NDLAVELA MAVIMBELA N.O.**

**3<sup>rd</sup> Respondent**

**Neutral citation:** *Priscilla Dlamini vs Hunter Shongwe & Others (90/2012) [2013]*  
*[SZSC 11] (31 May 2013)*

**Coram:** M.M. Ramodibedi C.J.  
A.M. Ebrahim J.A.  
E.A. Ota J.A.

**For the Applicant:** B. Mndzebele

**For the 1<sup>st</sup> Respondent:** L. Malinga

**For the 2<sup>nd</sup> & 3<sup>rd</sup> Respondents:** V. Kunene

**Heard:** 10 May 2013

**Delivered:** 31 May 2013

**Summary:** *Civil application to have appeal noted by the 1<sup>st</sup> Respondent to be deemed to be abandoned in terms of the provisions of Rule 30(4) of the Court of Appeal Rules 1971 – Appeal withdrawn at the hearing - 1<sup>st</sup> Respondent to pay the wasted costs.*

## **JUDGMENT**

### **EBRAHIM JA**

[1] The Applicant brought an application by way of notice of motion in which she sought an order:

1. *Declaring the appeal noted by the Appellant (1<sup>st</sup> Respondent) on the 17<sup>th</sup> December 2012 against the judgment of the High Court of Swaziland handed down on 13<sup>th</sup> December 2012 abandoned.*
2. *Costs of suit.*

She sought no order against 2<sup>nd</sup> and 3<sup>rd</sup> Respondents.

[2] It was the Applicant's case that on the 13<sup>th</sup> December 2012 the High Court of Swaziland dismissed an application brought by the 1<sup>st</sup> Respondent to interdict the Applicant and the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents from ejecting him from her home or house.

[3] The 1<sup>st</sup> Respondent noted an appeal against this decision on the 17<sup>th</sup> December 2012 but has failed to file a record of proceedings in accordance with the provisions of Rule 30 of the Court of Appeal Rules, 1971 (The Rules).

[4] It was the Applicant's assertion that the record of proceedings ought to have been filed within two months of the date of the noting of the Appeal, that is on or before the 18<sup>th</sup> February 2012. To date, approximately four months after noting of the appeal, no record of proceedings has been filed by the Respondent.

[5] Rule 30 of the Rules provides:

*“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.*

*(2) ...*

*(3) ...*

*(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”.*

Rule 16 of the Rules provides:

*“16. (1) The Judge President or any judge of appeal designated by him may on application extend any time prescribed by these rules:*

*Provided that the Judge President or such judge of appeal may if he thinks fit refer the application to the Court of Appeal for decision. (Amended L.N. 102/1976.)”*

- [6] No application was made by the 1<sup>st</sup> Respondent in which he sought an extension of time to file the record as provided for by Rule 16(1) of the Rules.
- [7] The Applicant through her attorney sought leave to have this matter enrolled in order to deal with the point raised by the Applicant that the appeal must be deemed to be abandoned.
- [8] The matter was enrolled for hearing on the 10<sup>th</sup> May 2013 and the Applicant was directed to file her Heads of Argument on or before the 6<sup>th</sup> May 2013.
- [9] The Applicant filed her heads timeously.
- [10] The Appellant failed to satisfy the Rules pertaining to the filing of the record in terms of Rule 30. Mr. L. Malinga appeared before this court on the 10<sup>th</sup> May 2013, representing the 1<sup>st</sup> Respondent, (Hunter Shongwe) and advised that his client was withdrawing his appeal and tendering costs. To his credit, this concession was properly made.

[11] Accordingly the appeal is dismissed with costs.

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A.M. EBRAHIM  
JUSTICE OF APPEAL

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M.M. RAMODIBEDI  
CHIEF JUSTICE

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E.A. OTA  
JUSTICE OF APPEAL