



IN THE SUPREME COURT OF SWAZILAND

JUDGMENT

Civil Appeal Case No. 16 /2013

In the matter between:

THE CHAIRMAN OF THE ROAD

TRANSPORT BOARD AND ANOTHER

APPELLANT

v

SIMON MNUMZANE VILANE

RESPONDENT

Neutral citation : The Chairman of the Road Transport Board v Simon
Mnumzane Vilane (16/2013) [2013] SZSC 63 (29 November
2013

Coram : S.A. MOORE JA, E.A. OTA JA, P. LEVINSOHN JA.

Heard : 5 NOVEMBER 2013

Delivered : 29 NOVEMBER 2013

Summary : *Record on appeal filed hopelessly and egregiously out of time – Application for condonation made from the Bar at the hearing of the appeal – Application not supported by evidence on affidavit – Application for condonation refused – Appeal dismissed with costs.*

JUDGMENT

MOORE JA

THE APPEAL

[1] This appeal was enrolled for hearing on the 5th November 2013. On the 4th November, 2013 the day before the scheduled hearing, members of this court received a Notice of Intention to Raise a Point of Law. That Notice, filed by the Respondent’s Attorneys warned the Appellants that the ‘Respondent will accordingly move for an order that the appeal be dismissed with costs’ because, under the relevant Rules of The Supreme Court, the appeal had been abandoned. That notice was duly served upon counsel for the appellants on the same 4th November 2013.

[2] A brief chronology of the relevant events in the matter reads as follows:

Appeal:	Noted 28 th March 2013
Record of Proceedings:	Lodged 24 th June 2013
Record of Proceedings Vol ii:	Lodged 17 th October 2013

[3] Counsel for the Respondent drew attention to Rule 30(1) of the Supreme Court Rules which stipulates that:

“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.” Emphasis added.

[4] Under the above sub-rule, the date for lodging a copy of the record was not later than the 27th May 2013. The lodging of the copy of the record on June 24th 2013 was already well out of time. That of vol ii on the 17th October 2013, was hopelessly and egregiously so.

[5] What is more, no application for leave was ever made under Rule 30 (3). Nor was any application made for an extension of time under Rule 16 or for condonation under Rule 17. In these circumstances, the force of the appellant's contention on the papers that the appeal 'shall be deemed to have been abandoned' under the provisions of Rule 30 (4) is irresistible.

[6] At the scheduled hearing of the appeal on the 5th November, 2013, this Court invited counsel for the appellant to respond to the respondent's prayer that the appeal be deemed abandoned. Counsel's reaction was to launch an oral application before the Court, unsupported by any filing or writing whatever, for leave to seek condonation of his unacceptable and inexcusable failure to comply with the relevant rules. Needless to say, that application was vigorously and effectively opposed by Mr. M.C. Dlamini for the respondent who rightly contended that the application for condonation was itself tardy, in as much as it ought to have been made before the expiration of the time provided by the rules, or as soon as possible thereafter, supported by good and sufficient cause disclosed in a supporting affidavit.

[7] In these circumstances, the belated application for condonation having been refused, the appeal is accordingly dismissed with costs.

ORDER

[8] It is ordered that:

The appeal be and is hereby dismissed with costs.

S.A. MOORE
JUSTICE OF APPEAL

I agree

E.A. OTA
JUSTICE OF APPEAL

I agree

P. LEVINSOHN
JUSTICE OF APPEAL

For Appellant : **Mr Vikiinduku Manana**

For Respondent : **Mr Siboniso C. Dlamini**