



IN THE SUPREME COURT OF SWAZILAND

JUDGMENT

HELD AT MBABANE

CIVIL CASE NO. 74/13

In the matter between:

BIGBOY MAMBA

APPELLANT

v

**ELECTIONS AND BOUNDARIES COMMISSION
DUMISANI NDLANGAMANDLA**

**1ST RESPONDENT
2ND RESPONDENT**

Neutral citation : Bigboy Mamba and Elections and Boundaries Commission & Dumisani Ndlangamandla (74/13) [2014] SZSC 25 (May 2014)

Coram: A.M. EBRAHIM J.A., S.A. MOORE J.A. and M.C.B. MAPHALALA J.A.

Heard: 20 MAY 2014

Delivered: 30 MAY 2014

Summary: Record of appeal submitted for certification out of time - No application for condonation - Appeal deemed abandoned and accordingly dismissed.

JUDGMENT

MOORE JA

INTRODUCTION

[1] Unusually, perhaps it might be appropriate to commence this judgment with a short chronology of the relevant steps bearing upon this appeal.

[2] CHRONOLOGY

WRITTEN JUDGMENT DELIVERED	17 TH OCTOBER 2013
DEADLINE FOR FILING NOTICE OF APPEAL AND FOR DELIVERY TO THE REGISTRAR AND FOR SERVING A COPY ON THE RESPONDENTS	13 TH NOVEMBER 2013
NOTICE OF APPEAL FILED.	15 TH NOVEMBER 2013
DEADLINE FOR LODGING A COPY OF THE RECORD OF APPEAL WITH THE REGISTRAR FOR CERTIFICATION AS CORRECT	12 TH JANUARY 2014

[3] By Notice of Motion dated the 2nd April 2014 Mr. Dumisani Ndlangamandla, the 2nd Respondent in the appeal sought orders:

- “1. Declaring the purported Appeal lodged by the 1st Respondent to have been abandoned in terms of Rule 30 (2) and (8) of the Court of Appeal Rule, 1971.
2. Dismissing the purported Appeal with costs.
3. Costs of Application.
4. Further and/or alternative relief”.

[4] Counsel for the 2nd Respondent sought and was granted leave to amend item 1 of the prayer to read Rule 30 (4) in place of Rule 30 (2). The requisite founding affidavit was that of the applicant himself. His critical averments were that:

- On or about the 15th November 2013, the 1st Respondent purported to lodge an appeal against a judgment issued by the High Court on the 7th October 2013.
- The 1st and the 2nd Respondents were not served with the belated appeal as referred by Rules 6 and 8 of the Court of Appeal Rules.
- By letter dated 17th February the 1st Respondent’s attorney admitted that service was purportedly effected upon Mkhwanazi attorneys on the 5th day of February 2014. That date was hopelessly late: particularly so because no application for leave or condonation had been made, nor was any reason given for the substantial delay.

- The 1st Respondent’s attorney also confessed that: “we have since recognized our error in that our messenger failed to serve you timeously”. He then pleaded: “Please accept an apology for the mistake and we shall leave you with the Record of proceedings in due course.”
- The record of proceedings had not been served up to the time when his affidavit was filed on the 2nd April 2014.
- Two further letters dated the 6th and 12th March respectively failed to raise the 1st Respondent out of his lethargy even though those letters telegraphed the applicant’s intention to approach this court for an order deeming the appeal to have been abandoned in terms of Rule 30 (4) of the Rules of this Court. Hence the present application.
- Finally, there was on file an affidavit indicating that the Respondent/Appellant was duly served with the Notice of Motion herein on the 14th April 2014 at 12:19 PM.

[5] To compound the woes besetting the appellant, the 1st Respondent bolstered the application of the 2nd Respondent by itself taking the point *in limine* that the appeal must be deemed to have been abandoned for the very reasons relied upon by the 2nd Respondent. It is not necessary to repeat the arguments advanced by the 1st Respondent on this question since they mirror those of the 2nd Respondent in all material particulars.

[6] In the most recent sessions of this Court, it has become unhappily necessary to apply the sanctions contained in Rule 30 (4) of the Rules of this Court. The following authorities illustrate the pains to which this Court has gone to encourage litigants and their legal representations to observe these sensible and reasonable time tables contained in the rules for the expeditious conduct and completion of litigation.

Gama v Swaziland Building Society & 3 Others [2013] SZSC

Roots Civil Ltd. v Inyatsi Construction Ltd. [2013] SZSC 67

Tasty Treats (Pty) Ltd. v KS Distributors [2013] SZSC 69

**Chairman of the Road Transport Board v Vilane [2013] SZSC
63.**

It is unfortunate that these exhortations appear, at least in this case, to have fallen upon stony ground.

[7] The force of the submissions made by both respondents is irresistible. Indeed, no adequate attempt has been made to challenge their correctness. Counsel for the appellant, to her great credit, readily conceded that, in the absence of an application for condonation, and having regard to the lateness of the submission of the record for certification, she could not advance any arguments in opposition to the application.

[8] In these circumstances, this Court is left with no alternative but, in obedience to the applicable rules, to deem the appeal to have been abandoned.

ORDER

[9] It is the order of this Court that:

- (i) The appeal is deemed to have been abandoned and is accordingly dismissed.
- (ii) The appellant must pay the costs of both the 1st and the 2nd Respondents.

S.A. MOORE
JUSTICE OF APPEAL

I agree

A.M. EBRAHIM
JUSTICE OF APPEAL

I agree

M.C.B. MAPHALALA
JUSTICE OF APPEAL

For the Appellant : MS. NONCEDO NDLANGAMANDLA
For the 1st Respondent : MR. TICHEME DLAMINI
For the 2nd Respondent : MR. MANDLA MKHWANAZI