



IN THE SUPREME COURT OF SWAZILAND

JUDGMENT

Held in Mbabane

Appeal Case No. 23/2014

In the matter between

LEBOMBO TRADING (PTY) LTD

Appellant

And

**NONDUMISO DLAMINI T/A NONDUMISO
HAIRDRESSING SALON**

Respondent

Neutral Citation: *Lebombo Trading (Pty) Ltd v Nondumiso Dlamini t/a
Nondumiso Hairdressing Salon (23/2014) [2015] SZSC
28(29th July 2015)*

Coram: **M. C. B. MAPHALALA ACJ, M. D. MAMBA AJA
M. J. DLAMINI AJA**

Heard: **6th July 2015**

Delivered: **29th July 2015**

DLAMINI AJA,

- [1] This matter (matters to be exact) began more than two years ago. It has a somewhat checkered history as may be seen from the number of supplementary papers filed of record claiming /justifying costs at a punitive scale on both sides at the High Court and the Magistrates' Court for the District of Manzini.
- [2] When Case No.23/2014 came up for hearing, there was still pending before this Court Case No.14/2014. At a glance both cases had the same Appellants and the same Respondents and same Counsel. The matters should have been consolidated, but this had not happened. When asked by the Court, Counsel ostensibly appearing for Appellant explained that indeed the matters should have been consolidated to be heard together. Counsel for Respondent being in agreement the matters were ordered consolidated. Thus case No.14/2014 fell away.
- [3] Noting that on the day of the Roll Call that is 29th June 2015 Counsel for both parties were present but said nothing about the matters not proceeding on the days scheduled, the Court expressed its displeasure when Counsel for Appellant stood up to say he had withdrawn from representing Appellant. Counsel had in fact filed Notice of Withdrawal on 3rd July, 2015. As he stood up to address the Court Counsel said he was not even sure who he was representing on that day, but was appearing as an officer of the Court to explain the embarrassing situation he found himself in. He let the Court know that from information he received from Counsel for the Respondent – who was also present in Court – the Appellant had apparently sold the premises, the subject matter of the dispute between the parties, sold the premises to a client of Counsel for the Respondent.
- [4] Counsel further informed the Court that to the best of his information, directors for the Appellant had relocated out of jurisdiction and he was not in contact with any of them. It would seem then the substratum for the case had disappeared, rightly

or wrongly. Counsel then found himself willy-nilly having to withdraw from the case since he was not sure who he was representing. A company without directors, a company which had for all intents and purposes become a shell entity, was not a good client to stand for in court.

- [5] Counsel for Respondent confirmed the sale of the property without more to add. If in fact the equity and shareholding in the company had changed Counsel for Appellant had no full authority to continue as Counsel in the matter. Appellant, no longer properly represented, there was no option but adjourn the matter to next session.
- [6] In his Notice of Withdrawal dated 3rd July 2015 to the Registrar of this Court, Counsel informed the Court that he was withdrawing in respect of both matters as indicated above. Further, the notice gave the reason for withdrawing: *“This has been due to client relocating to South Africa. Client has advised us that he did inform Mr. M. T. Ndlovu (Counsel for Respondent) that he (client) had sold the business and property and was no more the owner of the property.”*
- [7] There being no way to proceed with the matter, the Court made it clear to Counsel that these eleventh hour withdrawals/postponements have a disruptive effect on the work of the Court and should be avoided.
- [8] It remains to be said that Attorneys and their clients should be careful in doing what we were told happened here, that is, the surreptitious sale or disposal of the subject matter of the litigation without a court order or leave of the court. Such an act by parties could easily be a contempt of court not different from defeating the ends of justice. For instance, in another case before this Court during this session where a similar disposal occurred, the Court was informed that the proceedings had become moot: ‘the bird had flown away’. Even where the parties are agreed leave of the court is advisable at all times. Once a matter comes before court it must vacate the court by order of the court. It should not just disappear. The court

should not be used as a mere rubber stamp. In some cases the court may be justified in refusing to be such a rubber stamp to parties involved in behind the scene agreements.

[9] Case postponed by agreement of the parties. Matter not to be placed on the roll without leave of this Court. No order as to costs.

M. J. DLAMINI AJA

I agree

M. C. B. MAPHALALA ACJ,

I agree

M. D. MAMBA AJA

Appellant : No Appearance -/Mr. Mzizi as friend of the Court

For Respondent: Mr. M. T. Ndlovu