



IN THE SUPREME COURT OF SWAZILAND
JUDGMENT

HELD AT MBABANE

Criminal Appeal Case No. 27/2015

In the matter between:

REX

Appellant

and

ZANELE VILAKATI (Nee DLAMINI)

Respondent

In Re:

ZANELE VILAKATI (Nee DLAMINI)

Appellant

and

REX

Respondent

Neutral Citation : REX VS. ZANELE VILAKATI (27/16) [2016]
SZSC 22 (30 JUNE 2016)

Coram : R. CLOETE AJA, J. MAGAGULA AJA and
Z. MAGAGULA AJA

For the Appellant : ADVOCATE M. MABILA

For the Respondent : MR. S. DLAMINI

Heard : 18 MAY 2016

Delivered : 30 JUNE 2016

JUDGMENT

CLOETE -AJA

BRIEF BACKGROUND FACTS

- [1] 1. The Appellant, on 03 September 2015, was convicted of capable homicide and sentenced to seven (7) years imprisonment, two (2) years of which was suspended for a period of three (3) years under High Court Case No. 173/07.
2. The Appellant timeously noted an Appeal against both the conviction and sentence on 16 October 2015.
3. The Record of Appeal, which is the duty of the Registrar of this Court, was purportedly completed on 21 April,

2016 and according to the papers of the Respondent, was only served on 26 April, 2016.

4. Advocate Mabila acted for the Appellant in the Court *a quo* but for some reason unknown to this Court a Pro Deo representative was appointed and that representative filed Heads of Argument on behalf of the Appellant on 29 April, 2016.
5. On 16 May 2016, the Respondent filed and served a Notice of Application in terms of which it sought, *inter alia*, the late filing of a Cross Appeal and for the late filing of the documentation. This was accordingly forty eight (48) hours before the matter was to be heard on the date on which it was set down.
6. The Respondent filed its Heads of Argument on 17 May, 2016 and its Bundle of Authorities on the same day. This was one (1) day before the matter was to be heard.
7. On the same day, 17 May, 2016, the Appellant filed an Application for the postponement of the matter and, *inter*

alia, in her Affidavit in support thereof, advises the Court that;

7.1 full reasons why she wanted Advocate Mabila to act for her as he was fully conversant with the matter;

7.2 it was impossible to deal with the issues and the Application brought by the Respondent only forty eight (48) hours before the matter was to be heard;

7.3 the unavailability of Advocate Mabila at such short notice;

7.4 there was no prejudice to anyone if the matter was to be postponed;

7.5 Advocate Mabila had tried to meet with the Chief Justice to explain the position but that the Chief Justice, correctly, indicated that the Application should be brought in Court;

7.6 the Record before the Court was incomplete in that it did not properly set out the events and evidence given at an inspection *in loco*;

7.7 she was entitled, in terms of the Constitution, to a fair hearing.

8. On the same day, the Appellant filed a Notice of its intention to raise issues of law as regarded the Application brought by the Respondent relating to the Cross Appeal.

9. On the day of the hearing, namely 18 May, 2016, the Respondent filed the following documents;

9.1 its Notice of Intention to oppose the Application for postponement;

9.2 an opposing Affidavit;

9.3 Supplementary Heads of Argument.

10. Both Counsel agreed that the Record of Appeal was deficient as regards the evidence referred to by Advocate Mabila.

11. Accordingly this Court found that in the interest of dispensing fair and proper justice, that the Appellant be given a right to properly prepare for the Appeal (and Cross Appeal if the Application of the Respondent was successful) and given that the Application for the Cross Appeal and subsequent documentation was only filed forty eight (48) hours and twenty four (24) hours respectively before the matter was to be heard and as such the Appellant was clearly not in a position to deal with those issues adequately in the time frame.

JUDGMENT

- [2] 1. The Judgment of this Court, which was agreed to and accepted by both Counsel is as follows;

- 1.1 the Record of Appeal will be reconstructed by Counsel for both the Appellant and the Respondent so as to include all relevant transcripts and proceedings relating to the relevant inspection *in loco*, which Record will be delivered by them to the Registrar of this Court on or before 17 June 2016;
- 1.2 the Registrar of this Court is directed to complete, if necessary transcribe, and certify the Record and furnish same to both Counsel of the Appellant and Respondent on or before 01 July, 2016;
- 1.3 the Appellant shall serve and file its all-inclusive Heads of Argument by no later than 12 July 2016;
- 1.4 the bail granted to the Appellant is extended up to the date allocated for the trial being the first available date in the next session of this Court.

R. J. CLOETE
ACTING JUSTICE OF APPEAL

I agree

J. MAGAGULA
ACTING JUSTICE OF APPEAL

I agree

Z. MAGAGULA
ACTING JUSTICE OF APPEAL