



**IN THE SUPREME COURT OF SWAZILAND**

**JUDGMENT**

HELD AT MBABANE

Civil Appeal Case No.82/2015

In the matter between:

**SEYLAN TRAVEL AND TOURS (PTY) LTD. T/A**

Applicant

**UNIGLOBE SEYLAN TRAVEL**

And

**QUALITY CATERING SERVICES (PTY) LTD.**

Respondent

**Neutral citation:**

*Seylan Travel and Tours (Pty) Ltd. vs. Quality Catering Services  
(Pty) Ltd. (82/2015) [2016] SZSC 23 (30 June 2016)*

**CORAM:**

**S.P. DLAMINI, JA, M.C.B. MAPHALALA, CJ,  
K.M. NXUMALO, AJA**

**Head:** 23<sup>rd</sup> May 2016

**Delivered:** 30<sup>th</sup> June 2016

**Summary:** *Civil Appeal – Condonation of late filing of Heads of Argument – failing to file Heads of Argument in support of the Application of Condonation – postponement – costs De Bonis Propiis.*

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## **JUDGMENT**

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**S. P. DLAMINI, JA**

- [1] This appeal arises out of a judgment handed down by the High Court on 10<sup>th</sup> November 2015 wherein the court a quo dismissed plaintiff's cause of action with costs.
- [2] The parties have filed pleadings as per the time- line in paragraph [3]. In addition to the pleadings, appellant filed a notice for application for Condonation for the late filing of appellant's Heads of argument.
- [3] The relevant time-line of the pleadings herein is as follows:
- a) Appellant filed the notice of appeal on 10-12-2015;
  - b) Appellant filed the record of appeal on 10-02-2016;
  - c) Respondent filed its Notice of Intention to oppose the appeal on 29-04-2016;

- d) Appellant filed heads of argument on 29-04-2016;
- e) Respondent filed heads of argument on the 17-05-2016;
- f) On 06-05-16 appellant filed application for condonation for the late filing of the heads of argument; and
- g) Respondent filed opposing affidavit to the application for condonation.

[3.1] The time- line is very relevant in so far as it demonstrates that as of 10<sup>th</sup> December 2015 the appellant had decided to appeal against the judgment of the court *a quo* as signified by the notice of appeal and that appellant's heads of argument were filed out of the time in terms of Rule 31(1) of the Court of Appeal Rules.

[4] Rule 31 provides as follows, inter alia;

*“(1) In every civil appeal and in every criminal appeal the appellant shall, not later than 28 days before the hearing of the appeal, file with the Registrar six copies of the main heads of argument to be presented on appeal, together with a list of the main authorities to be quoted in support of each head. (Amended L.N. 37/1983; L.N. 77/1989.)*

*(2) A copy of such main heads of argument and list shall be served within the same period on the respondent.”*

[5] The Rule is very clear and it is not in dispute that indeed appellant did not comply with the Rule 31 (1) resulting in respondent filing heads of argument without the benefit of the

of the appellant's heads of argument. The prejudice is very clear here in view of the fact that the respondent had to speculate as to appellant's heads of argument and authorities to be relied upon by the appellant.

[6] At the hearing of the matter before this Court on 23-05-2016, it came to the fore that;

- (i) The application for condonation for the late filing of the heads of argument was opposed; and
- (ii) Appellant had not filed heads of argument and authorities in support of the application for condonation.

[7] To make matters even worse, counsel for appellant appeared unable to address some issues raised when the matter was called for hearing by this Court. Furthermore, Mr. Elvis Maziya the Principal attorney of the appellant's Attorneys Law firm was not in Court to assist and there was no valid explanation given for his absence. This Court will not condon a care-free approach when it comes to the hearing of matters before it.

[8] Consequently, this appeal is being postponed and costs for the day are awarded against plaintiff's Attorney *De Bonis Propriis*. In this regard, refer to the case of **WAAR vs. LOUW 1977 (3) SA** page 297 for authority of granting costs *De Bonis Propriis*. The court in the **WAAR** case at paragraph H, stated the following;

*“The office of attorney is a high and responsible office. The Attorney’s profession is a learned profession requiring great skill from its members. Mistakes which an attorney makes in litigation and which result in unnecessary cost should, therefore, not lightly be overlooked. And a litigant should not always be obliged himself to pay the costs which have been caused by the negligence of his attorney.”*

In the above-mentioned case, the court did caution against being too strict against Attorneys and punishing every mistake of an attorney by costs De Bonis Propriis. However, the Court is satisfied in the circumstances of this matter that costs De Bonis Propriis are justified.

## **ORDER**

[9] In view of the foregoing, the Court makes the following order;

1. The appeal is postponed to the next session;
2. Appellant to file heads of argument together with a list authorities in support of the application for condonation for the late filing of the main heads of argument;
3. Respondent is at liberty to file supplementary or further heads of argument, if it deems it necessary; and
4. Respondent is awarded costs for the day De Bonis Propriis.

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**S.P. DLAMINI**  
**JUSTICE OF APPEAL**

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**M.C.B MAPHALALA**  
**CHIEF JUSTICE**

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**K.M. NXUMALO**  
**ACTING JUSTICE OF APPEAL**

FOR APPELLANT: **MR. ELVIS M. MAZIYA**

FOR RESPONDENT: **MS. GIGI A. REID**