



**IN THE SUPREME COURT OF SWAZILAND**  
**JUDGMENT**

HELD AT MBABANE

Civil Appeal Case No. 08/2016

In the matter between:

**SIMANGA GINA**

**Appellant**

and

**CLEMENT SIMELANE**

**Respondent**

Neutral Citation : SIMANGA GINA VS. CLEMENT SIMELANE  
(08/16) [2016] SZSC 27 (30 JUNE 2016)

Coram : CLOETE AJA, MAGAGULA AJA and  
MANZINI AJA

For the Appellant : MR F. TENGBEH

For the Respondent : MR M. SITHOLE

Heard : 25 MAY 2016

Delivered : 30 JUNE 2016

## **JUDGMENT**

**CLOETE -AJA**

### **BRIEF BACKGROUND FACTS**

- [1]
1. Proceedings were instituted by the Appellant in the Siteki Magistrates Court under Case No. 546/2015 for the return of a certain motor vehicle and on 15 October 2015, that Court granted the Order sought as appears on page 21 of the incomplete Record of Appeal placed before this Court.
  2. Thereafter, under High Court Case No. 210/2016, the Respondent purportedly sought to set aside the Judgment of the said Magistrates Court and it is somewhat of a mystery on what basis such Application was brought.
  3. At pages 150 to 154 of the incomplete Record of Appeal, the Judge in the Court *a quo*, appeared to give some form of verbal Judgment on the matter on 05 February 2016.

4. Up to the date of the hearing of this matter, the said Judge had not handed down his written reasoned Judgment.
5. On 10 February 2016, the Appellant filed a Notice of Appeal against the High Court Judgment.
6. The Attorney for the Appellant wrote a series of letters to the Registrar of this Court, copied to the Judge in the Court *a quo*, pointing out that the said Judge had not handed down his reasoned Judgment and as such the Record of Appeal could not be completed and in a letter dated 06 April 2016, whilst reiterating the above, suggested to the Registrar that the matter not be set down for the current session of this Court but this was seemingly ignored and despite the issues raised, the matter was set down for this session.
7. On 09 May 2016, the Appellant filed what is now known to be an incomplete Record of Appeal and despite the fact that there was clearly no written Judgment by the Judge in the Court *a quo*, the Registrar nevertheless certified the

Record of Appeal which in our view should not have happened.

8. On 12 May 2016, the Appellant filed a Notice of Amendment to its Notice of Appeal. As an aside, there is no Application before this Court in terms of Rules 7 and/or 12 for the leave of this Court to bring about such amendment.
9. On 13 May 2016, the Appellant filed a Notice of Application for Condonation of the late filing of the Record of Appeal and its Heads of Argument in terms of Rule 17. As a further aside, whether this Application complies with the provisions of Rule 17 read together with numerous decisions of this Court, remains open for conjecture.
10. On the same day, the Appellant filed its Heads of Argument and on 16 May 2016, filed its Bundle of Authorities.

11. On 19 May 2016, the Respondent filed a Notice of its intention to oppose the Condonation Application of the Appellant but up to the date of the hearing of this matter had not filed any opposing Affidavit or any other relevant documentation.
12. As at the date of the hearing of this matter, the Respondent had not filed its Heads of Argument nor a Bundle of its Authorities.
13. On 24 May 2016, the Appellant filed a Notice of Intention to Oppose “the above action” which is a mystery.
14. At the hearing of this matter, Mr Sithole advised the Court that he wanted to hand in from the Bar, the Application which was the subject of the Notice of Opposition filed by the Appellant as in paragraph 13 above. The Court refused to accept such documentation.
15. As at the date of the hearing, there was accordingly no Application by the Respondent for any form of condonation.

16. The Court pointed out to the Attorneys that it was apparent that this matter originated in the Magistrates Court and as such it was probable that the provisions of section 15 of the Court of Appeal Act applied and appeared not to have been complied with.
  
17. Whilst crediting the Appellant's Attorneys for communicating with the Registrar of this Court on a number of occasions relating to the reasoned Judgment of the Judge in the Court *a quo*, the inability to accordingly complete the Record of Appeal fully and the enrolling of the matter but other than that both sets of Attorneys have treated the matter and this Court with no respect for the Rules of such Court and as such are equally culpable.
  
18. Given the facts set out above, the Court had no alternative but to strike the matter off the roll and the parties are accordingly at liberty to follow whatever course they deem necessary.

**JUDGMENT**

[2]            1.            The matter is struck off the roll with no Order as to costs.

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**R. J. CLOETE**  
**ACTING JUSTICE OF APPEAL**

I agree

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**J. MAGAGULA**  
**ACTING JUSTICE OF APPEAL**

I agree

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**M. J. MANZINI**  
**ACTING JUSTICE OF APPEAL**