



## **THE SUPREME COURT OF SWAZILAND**

**CIVIL CASE NO.: 70/14**

### **RULING**

In the matter between:

**IVAN GROENING**

**APPELLANT**

**AND**

**STEALTH SECURITY (PTY) LTD**

**1<sup>ST</sup> RESPONDENT**

**ANITA HAYES**

**2<sup>ND</sup> RESPONDENT**

**SIKHUMBUZO SIMELANE**

**3<sup>RD</sup> RESPONDENT**

**MASTER OF THE HIGH COURT**

**4<sup>TH</sup> RESPONDENT**

**Neutral Citation:** *Ivan Groening v Stealth Security (Pty) Ltd & 3 Others (70/2014) [2016]*  
*SZSC 29 (30<sup>th</sup> June 2016)*

**CORAM:** **K. M. NXUMALO AJA**  
**R. CLOETE AJA**  
**J. M. MAGAGULA AJA**

**Heard:** **3<sup>rd</sup> May 2016**

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

Summary: *Civil procedure – application for condonation for late filing of the application for leave to appeal. – judgment of court a quo under High Court Case No. 400/2013 – notice to oppose filed by First Respondent – application made to Supreme Court under Civil Case 34/2015 – Supreme Court ruled appeal incompetent and struck out with costs to Respondents – matter brought to the Supreme Court again – matter struck off the roll.*

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**RULING**

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**K. M. NXUMALO - AJA**

[1] The appellant has filed an application for:

1.1 condonation for the late filing of an application for leave to appeal;

1.2 leave to appeal the judgment of the *court a quo* under High Court Civil Case No. 400/2013.

[2] The First Respondent has filed a notice of intention to oppose although Counsel for the First Respondent indicated that First

Respondent is not opposing the application made by the Appellant and shall abide by the judgment of this Court.

[3] The Appellant in paragraph 12 of his Founding Affidavit states that:

3.1 The appeal was noted on 12<sup>th</sup> November 2014;

3.2 The appeal was enrolled for argument in the November 2014 session of the Supreme Court but could not be proceeded with and was removed from the roll due to the appointment of the Respondents' erstwhile attorney **Justice Nkosi** into the Supreme Court.

3.3 The appeal was enrolled in the November 2015 session of the Supreme Court.

3.4 The appeal was "*said to be incompetent and accordingly struck out with costs*" because it was filed out of time without leave for the extension of time sought.

[4] The Court drew the attention of the Counsel of the Appellant to the Ruling made by **Justice Dr. B. J. Odoki** in the Supreme Court case

No. 34/15 where in considering the matter the Supreme Court noted, in paragraphs 9 to 13 that:

- 4.1 The Notice of Appeal was filed on the 12<sup>th</sup> November 2014, whereas the judgment of the High Court being appealed from was delivered on 22<sup>nd</sup> September 2014;
- 4.2 The appeal was filed after more than the four week period within which the Notice of Appeal must be filed;
- 4.3 Counsel for the Appellant could not explain the reason for the delay in filing the Notice of Appeal and conceded that the Notice of Appeal was filed out of time;
- 4.4 Counsel for the Respondents submitted that there was no explanation given for late filing and therefore the appeal should be dismissed with costs;
- 4.5 Rule 8 of the Court of Appeal Rules provides that an appeal shall be filed within four weeks of the date of the judgment appealed against;
- 4.6 In the present case the Notice of Appeal was lodged in court seven weeks after the decision of the High Court. Therefore the

Notice of Appeal was filed out of time. No application for leave of appeal out of time had been sought or granted.

4.7 The Supreme Court ruled in paragraph 14 that the appeal is consequently incompetent and struck out with costs to the Respondents.

[5] The effect of the ruling that “*the appeal is struck out with costs to the Respondents*” means that the appeal fails and is dismissed with costs.

[6] It is clear that the Supreme Court in the last session considered the merits of the matter and gave a ruling.

[7] Consequently it is ruled that:

7.1 The matter cannot be brought back to the Supreme Court; and

7.2 The matter is struck off the roll.

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**K. M. NXUMALO**  
**ACTNG JUDGE OF APPEAL**

I agree

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**R. CLOETE**  
**ACTING JUDGE OF APPEAL**

I agree

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**J. M. MAGAGULA**  
**ACTING JUDGE OF APPEAL**

For the Appellant: **Mr. T. N. Sibandze**

For the Respondents: **Mr. Mangaliso Nkomondze**