



**THE SUPREME COURT OF SWAZILAND**

**RULING**

**CIVIL CASE NO.: 27/15**

In the matter between:

**JOSEPH SAMBO**

**APPELLANT**

**AND**

**ALFRED MABANGA**

**RESPONDENT**

**Neutral Citation:**        *Joseph Sambo v Alfred Mabanga (27/2015) [2016]*  
*SZSC 30 (30<sup>th</sup> June 2016)*

**CORAM:**            **K. M. NXUMALO**  
**C.    MAPHANGA**  
**M. J. MANZINI**

**Heard:**              **6<sup>th</sup> May 2016**

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

Summary: *Civil procedure – application for condonation in terms of Rule 16 and 17 of the Rules of the Supreme Court – condoning defects in the record of appeal filed by the Appellant – supplementing the record of appeal with duly scrutinized summary of expert evidence agreed by the parties as’ legal representatives – permitting filing of Appellants consolidated written submissions – application opposed by the Respondent –Appellant’s failure to set forth good and sufficient cause for condonation application for failure to comply with Rules 16 and 17 – record filed by the Appellant includes documents and material not relevant to the Appeal – record remaining incomplete - no agreed record on which the Supreme Court can consider the merits of the appeal ruling matters struck off the roll and parties ordered to compile and agree on a record to be satisfied by the Registrar in terms of the rules so that matter can be enrolled for hearing at the next session of the Supreme Court.*

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**RULING**

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**K. M. NXUMALO A.J.A**

- [1] The Appellant has timeously noted an appeal against a judgment of the *court a quo* upon various grounds of appeal.
- [2] The appeal was postponed to this session of the Supreme Court primarily to add missing expert evidence in order to complete the record of appeal.
- [3] The Appellant has filed a record certified by the Registrar as true and accurate proceedings of the High Court Case No. 1768/2008 which was presided upon by **Maphalala PJ**.
- [4] The Appellant has filed an application to this court for:
- 4.1 Condoning the defects in the record of appeal;
  - 4.2 Supplementing the record of appeal with a summary of expert evidence by the parties' legal representatives;
  - 4.3 Permitting the Appellant's constituted written submissions.

[5] The Respondent opposes the appeal and the application made by the Appellant upon the following grounds:

- 5.1 The Respondent raised issues regarding the incomplete record of the proceedings and as such, the Appellant had prepared and filed the record without due regard to Rule 30 (5) of the Court of Appeal Rules;
- 5.2 The record of the proceedings filed, although certified by the Registrar of the High Court, is without the Respondents input;
- 5.3 The incomplete record, although bulky, has a lot of material identified in the last Supreme Court session as irrelevant for the scope of the appeal;
- 5.4 The matter was postponed in the last session of the Supreme Court for the Appellant to redo the record which the Appellant's Attorney undertook to redo which he has failed to do;
- 5.5 By failure to file a complete record, the Appellant has also abandoned the appeal in terms of the Rules.

5.6 The Appellant has failed to satisfy the requirements of Rule 16 and 17 in respect of the condonation and the extension of time. The Appellant has failed to note a case for its prospects of success.

[6] The Respondent in its opposition against the incomplete record has attached a transcript of the proceedings in the last session of the Supreme Court where it appears that:

6.1 The Appellant's Attorney conceded that the record is incomplete because of the malfunctioning of the recording machines;

6.2 The incomplete part of the record is that one expert witness evidence and the basis of the appeal is that the Learned Judge in the *court a quo* chose the evidence of the wrong expert;

6.3 In the absence of the evidence of the other expert witness, the court had no basis to evaluate the evidence of the missing expert witness;

- 6.4 Appellant's Attorney requested to try and reconstruct and complete the record from the notes of both parties;
- 6.5 Appellant's Attorney undertook to present a record agreed to with the Respondent's Attorneys;
- 6.6 The last session of the Supreme Court was handicapped by the incomplete record and could not meaningfully determine which expert evidence is preferable to the other;
- 6.7 The last session of the Supreme Court postponed the matter to this session of the Supreme Court.

[7] It is clear that there is no full and proper record of the proceedings in the *court a quo* which is agreed to by both parties in terms of the Rules.

[8] It is ordered that:

- 8.1 The matter is struck off the roll;

8.2 The parties to compile and agree on a record of the proceedings before the *court a quo* on which the appeal can be determined;

8.3 Parties to submit their heads of argument and supporting authorities in terms of the Rules.

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

I agree

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**C. MAPHANGA**  
**ACTNG JUDGE OF APPEAL**

I agree

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

For the Appellant: **Mr. S. Dlamini**

For the Respondent: **Mr. S. Masuku**