



**IN THE SUPREME COURT OF SWAZILAND**

**JUDGMENT**

Civil Appeal Case No. 79/2015

In the matter between:

**BUSINESS 100 & PICTURE FRAMES**

**1<sup>st</sup> Appellant**

**BENNY NDLANGAMANDLA**

**2<sup>nd</sup> Appellant**

**vs**

**DICKSON MASEKO**

**Respondent**

**Neutral citation:** *Business 100 & Picture Frames and Another vs Dickson Maseko (79/2015) [2016] [SZSC] 58 (30 June 2016)*

**Coram:** **R. J. CLOETE AJA**  
**J. S. MAGAGULA AJA**  
**C. MAPHANGA AJA**

**Heard:** 23<sup>rd</sup> May, 2016

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

**Summary:** *Civil Procedure – Appeals from High Court decision in appellate jurisdiction – no leave from Supreme Court nor certificate from Judge who dealt with appeal from Magistrates Court – appeal not properly before the court – litigant appearing in person on account of withdrawal of attorneys of record – litigant warned to*

*seek legal representation – matter struck of the roll – no order as to costs.*

## **JUDGMENT**

### **MAPHANGA AJA**

[1] The Appellant Benny Ndlangamandla appeared in person before this court. It turns out he is a sole trader carrying on business under the style Business 100 & Picture Frames. At the time of the filing of the Notice of appeal he was represented by the firm Mbuso Simelane and Associates but the said firm subsequently withdrew as attorneys of record on the 2<sup>nd</sup> March 2016.

#### **Brief background**

[2] This matter originates from a vindictory action brought by the Respondent in the Magistrates Court for the ejection of the Appellants from his premises. The Appellants entered an appearance to defend the action and in the outcome the Magistrates Court granted judgment to the Respondent and ordered the ejection of the Appellants.

[3] Unfazed the Appellants appealed the decision of the Magistrates Court before the High Court which dismissed the appeal on the 20<sup>th</sup> November 2015.

[4] It is from this decision of the High Court that the Appellant now approached this court and in so doing timeously filed a Notice of Appeal on the 8<sup>th</sup> December 2015.

[5] It is incomprehensible how ostensibly acting without legal advice, the Appellants have even had the temerity of lodging this appeal in complete disregard of the procedural provisions of the Court of Appeal Act and the Rules.

[6] All civil appeals emanating from decisions of the High Court sitting in its civil appellate jurisdiction are governed by section 15 of the Court of Appeal Act 74/1954 whose provisions state:

**“Right of appeal from the High Court civil appellate jurisdiction**

**15. A person aggrieved by a judgment of the High Court in its civil appellate jurisdiction may appeal to the Court of Appeal with the leave of the Court of Appeal or upon the certificate of the Judge who heard the appeal, on any ground of appeal or upon the certificate of the Judge who heard the appeal which involves a question of law but not a question of fact.”**

(emphasis added)

[7] Before us there is no evidence of any leave granted by this Court to appeal the judgment by his Lordship Justice Dlamini T nor has a certificate issued by that Judge in terms of section 15 of the Court of Appeal Act been filed to accompany this application.

[8] When the Appellant, Mr Ndlangamandla, appeared before us and his attention was drawn to this shortcomings in the filling of this appeal, he did not seem to appreciate the position. No doubt as a lay person in the field of law and obviously having not been properly advised or apprised of the pertinent statutory position his situation is perhaps understandable.

[9] Mr Ndlangamandla, conceding the point and pleading ignorance with the rules, sought the indulgence of the court for leave to correct the error and to seek the requisite certificate.

[10] Whilst the peculiar circumstances the Appellant finds himself in may be understandable, this court, on numerous decisions has adopted a strict approach to lack of diligence on the part of litigants and their attorneys as it related to non-compliance with or disregard to procedural rules, no less so when the litigants are represented by Counsel

[11] In **Jubulane A Soko vs Ngwane Mills (Pty) Ltd (34/14) [2014] SZSC 66, Ebrahim JA** quotes the following remarks:

**By Korsah JA in Kombayi vs Berkhout 1988 (1) ZLR 53 (S) at 56 where he says**

**“Although this Court is reluctant to visit the errors of a legal practitioner on his client, to whom no blame attaches, so as to deprive him of a re-hearing, error on the part of a legal practitioner is not by itself a sufficient reason for condonation of a delay in all cases. As Steyn CJ observed in Saloojee & Anor NNO v Minister of Community Development 1952(2) SA 135 (A) at 141C:**

**A duty is cast upon a legal practitioner, who is instructed to prosecute an appeal, to acquaint himself with the procedure prescribed by the Rules of the Court to which a matter is being taken on appeal.”**

- [12] Further, the learned **Ebrahim JA** also refers to the remarks of **Ziyambi JA** in **MM Pretorious (Pvt) Ltd and Ano vs Mutyambizi 5- 29 -12; 012 (2) ZLR 295 (S)** to the effect that a legal practitioner is not engaged by his client to make omissions and to commit oversights.
- [13] Sadly in this case the Appellant was ill-advised and this appeal has not been properly brought before this court. It is defective and should not have received the Registrar's *imprimatur*. However as the Appellant appeared before us in person and does not presently have the benefit of legal counsel, we are inclined to allow him an opportunity to seek advice and not to shut the door firmly on him.
- [14] The Respondent has opposed this appeal on various grounds including going into the merits as more fully articulated in his Heads of Arguments filed before us.
- [15] Given the situation, this Court has had to deal with the more immediate issue as a threshold question. We therefore rule that this appeal is not properly before this court. That being so it is unnecessary to go into the issues as raised by the Respondent.
- [16] With much reluctance, taking into account the circumstances of the Appellant, we also determined that this is an appropriate instance where the Court may in its discretion strike the matter from the roll on account of the unfortunate history in this litigation and the costs it will have inevitably brought in its wake.

[17] As such it is hereby ordered that the appeal be struck off the roll with costs.

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C. MAPHANGA

ACTING JUSTICE OF APPEAL

I AGREE

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R. J. CLOETE

ACTING JUSTICE OF APPEAL

I ALSO AGREE

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J. S. MAGAGULA

ACTING JUSTICE OF APPEAL

For the Appellants: in person

For the Respondent: Mr. Mntshali