



IN THE SUPREME COURT OF SWAZILAND

Held at Mbabane

Civil Appeal Case No. 9/2016

In the matter between:

THE NATIONAL COMMISSIONER OF POLICE

Applicant

AND

**MUZI MIKE MABUZA
SIPHO MFANELENI MDLULI
MONGI PINCUSS MAZIBUKO**

**1st Respondent
2nd Respondent
3rd Respondent**

In re:

**MUZI MIKE MABUZA
SIPHO MFANELENI MDLULI
MONGI PINCUSS MAZIBUKO**

**1st Appellant
2nd Appellant
3rd Appellant**

AND

THE NATIONAL COMMISSIONER OF POLICE

Respondent

Neutral citation:

*The National Commissioner of Police vs Muzi Mike
Mabuza and 2 Others (9/2016) [2016] SZSC 65 (30
June 2016)*

Coram:

**M.C.B MAPHALALA CJ, Z. MAGAGULA AJA
AND M.J. MANZINI AJA**

Heard:

30 May 2016

Delivered:

30 June 2016

Summary: Civil procedure – appeal – application in terms of Rule 30 (4) of Supreme Court Rules – application to have appeal deemed to have been abandoned – no record of appeal – appellant’s attorneys filing defective notice of withdrawal as attorneys of record – application refused – proper service on appellants ordered.

JUDGMENT

MANZINI AJA

[1] This is an application brought in terms of Rule 30 (4) of the Supreme Court Rules for an order in the following terms:

1. That the Appellant’s appeal is declared abandoned, and is hereby dismissed with costs for non compliance with the Rules of this Court.
2. That the appellants are ordered to pay the costs of this application.
3. Granting the respondents further and/or alternative relief.

[2] The Applicant is the National Commissioner of Police, who is the 1st Respondent in the appeal filed by Muzi Mike Mabuza, Sipho Mfaneleni Mdluli and Mongi Pincuss Mazibuko (the Respondents in this application).

[3] The brief facts of the matter are as follows:

- 3.1 The Respondents launched a review application in the High Court, seeking, inter alia, an order reviewing, correcting and setting aside the disciplinary hearing held by the First Respondent (the Commissioner of Police) at Nhlanguano Police Station as illegal, irregular and procedurally improper for the reasons set out in the supporting affidavit;
- 3.2 The Respondents also prayed for ancillary relief;
- 3.3 The application was opposed by the 1st Respondent (Applicant herein);
- 3.4 The matter was subsequently heard by Justice M. Dlamini, who dismissed the application on the 2nd February, 2016;
- 3.5 An appeal was then lodged against her judgment on the 15th February, 2016 on several grounds, which are not relevant for the determination of this application.

[4] The Applicant herein bases his application on the following grounds:

1. The Respondents have failed to appoint new attorneys of record within the time period specified in the Rules; and
2. The Respondents (as appellants) have failed to file the record of appeal within the two-month period specified in the Rules.

[5] The Notice of Withdrawal as Attorneys of Record by Attorneys Dlamini-Kunene Associated is dated 19th February, 2016. It is addressed to the Registrar of the High Court and the office of the Attorney-General (as Attorneys for the National Commissioner of Police) and was served on them on the 23rd February, 2016. The Notice is not addressed to any of the Respondents. There is no indication at all whether Attorneys Dlamini-Kunene Associated complied with Rule 20 in serving the Notice of Withdrawal on the Respondents. Thus, there is no proof that the Respondents were served.

[6] Rule 20 provides that:

“Service, where required in these rules, shall be effected in the same manner as is prescribed for service of process of the High

Court:

Provided that any notice or other document which is required or authorised by these rules to be given or sent shall be deemed to be duly given or sent if forwarded by registered post addressed to the person to whom such notice or other document is so required or authorized to be given or sent.”

(my own underlining).

[7] As there is no specific rule of this Court regulating withdrawal of attorneys in appeal proceedings, and I am to be guided by Rule 16 (4) (a) of the Rules of the High Court which provides that:

“Where an attorney acting in any proceedings for a party ceases to act, he shall forthwith deliver notice thereof to such party, the Registrar and all other parties: provided that notice to the party for whom he acted may be given by registered post”.

(my own underlining)

[8] Thus, the Notice of Withdrawal relied upon by the Applicant is defective for two reasons. Firstly, it is not directed to the Respondents. Secondly, there is no proof of service. Counsel for the Applicant could not offer any explanation when asked about satisfaction of these requirements.

[9] In my view, it would be unfair to deem the appeal abandoned or to dismiss it, when clearly the Respondents have not been notified according to law about the withdrawal of their attorneys of record. This is the highest court of the land and a defective of notice of withdrawal will not be considered lightly, let alone be the basis of an unfair advantage to another litigant. That would not be in the interests of justice.

[10] In the circumstances, the application to deem the appeal abandoned in terms of Rule 30 (4) is refused. There must be proper service of the Notice of Withdrawal As Attorneys of record on the Respondents. It will be up to them whether they wish to prosecute the appeal or not; however, this must be subject to the Rules of this Court.

[11] **ORDER**

It is the Order of this Court that:

1. The application to deem the appeal abandoned in terms of Rule 30 (4) is refused.
2. Attorneys Dlamini-Kunene Associated are hereby directed to serve a proper Notice of Withdrawal as Attorneys of Record on the Respondents.
3. No order as to costs.

M.J. MANZINI AJA

I agree.

M.C.B. MAPHALALA CJ

I also agree.

Z. MAGAGULA AJA

For the Applicant:

Mr. V. Kunene (Attorney General's
Chambers)

No appearance by or for the Respondents