



IN THE SUPREME COURT OF SWAZILAND

JUDGMENT

CIVIL APPEAL CASE NO: 34 /2015

In the matter between:

THULANI RUDOLF MASEKO
APPLICANT

AND

THE HONOURABLE CHIEF JUSTICE

1ST RESPONDENT

THE DIRECTOR OF PUBLIC PROSECUTIONS

2ND RESPONDENT

Neutral Citation:

Thulani Maseko vs. The Honourable Chief Justice and Others (30/2015) [2016] SZSC 08(30 June 2016)

Coram:

DR. BJ ODOKI, JA

SP DLAMINI, JA

R CLOETE, AJA

Z. MAGAGULA, AJA

M. LANGWENYA, AJA

Heard: 10th May 2016

Delivered: 30th May 2016

Summary: Civil Procedure - Application for review of decision of the Supreme Court under Section 148 (2) of the Constitution - Delay in lodging Application - Points of Law raised *in limine* by the Respondent - Applicant not able to reply to the points in absence of instructions from his client who is out of the country - whether Application academic or moot - Respondents concede that matter be removed from the Roll - Application removed from the Roll with no order for costs.

JUDGMENT

DR. B. J. ODOKI JA.

[1] The Appellant brought an Application for review of the judgment of the Supreme Court under Section 148 (2) of the Constitution for the following orders:-

1. Reviewing the decision of this Honourable Court delivered on the 3rd December 2014 on the grounds set out in the attached Founding Affidavit.
2. Further and or alternative relief as the Honourable Court may deem fit.
3. Costs of Application.

[2] The main grounds stated in the Affidavit of the Application are:

- (1) That the Supreme Court erred in law in holding that M. Dlamini J did not have power to set aside the decision of the Chief Justice in issuing a warrant of arrest against the Applicant because the Chief Justice was exercising not judicial functions but semi-administrative functions, and therefore did not have authority to issue the warrant of arrest in the manner he did.
- (2) That the Supreme Court erred in finding that there was an application made for issuance of a warrant of arrest.
- (3) That the court failed to follow the law in the conduct of proceedings for contempt of court, where provision of the Constitution relating to fair hearing and personal liberty ought to have been respected.

[3] On the 5th November 2015, Appellant filed Heads of Argument elaborating on the above grounds for review.

[4] On the 9th July 2015 the Respondents filed a notice to oppose the Application.

[5] On the 9th May 2016 the Respondents filed a notice to raise points *in limine*

[6] On the 10th May 2016, the Respondents filed Heads of Argument in which they challenged the Application on several grounds.

[7] The Respondents raised the following points *in limine*:

1. The present Application does not fall within ambit of Section 148 (2) of the Constitution as no gross irregularity occurred, and hence there were no exceptional circumstances established as required under the Section.
2. The matter before the court is an appeal disguised as a review as the Applicant merely seeks to reverse the decision of the Supreme Court

3. The application for review is out of time since the judgment being reviewed was granted in November 2014 and Applicant took more than six months to lodge and has not explained the reason for the delay.
4. The matter of issue of warrant is academic or moot since the Appellant's criminal matter has since been concluded and the Appellant is now a free man.

[8] When the matter came before court in hearing, Counsel for the Applicant stated that he had only received the notice to raise points *in limine* the previous day and had not received instructions from his client who was out of the country, to enable him reply to the points. He prayed for postponement of the matter to a later date to enable him file a reply.

[9] Counsel for the Respondents submitted that there was no merit in the Application as it was academic or moot since the issue of warrants of arrest had been disposed off through the dismissal of the charges against the Appellant and the Appellant set free.

[10] Counsel for the Appellant conceded to the submission of Counsel for the Respondents and prayed that the matter be removed from the Roll with no order for costs.

[11] Accordingly the Application was removed from the Roll with no order for costs.

DR. B.J. ODOKI
JUSTICE OF APPEAL

I agree

S.P.D. DLAMINI
JUSTICE OF APPEAL

I agree

R. CLOETE
ACTING JUDGE OF APPEAL

I agree

Z. MAGAGULA
ACTING JUDGE OF APPEAL

I agree

M. LANGWENYA
ACTING JUDGE OF APPEAL

FOR THE APPLICANT: **MR. MKHWANAZI**

FOR THE RESPONDENT: **MR. V. KUNENE**