IN THE SUPREME COURT OF SWAZILAND

JUDGMENT

HELD AT MBABANE Civil Appeal No. 25/14

In the matter between:

Debbie Sellstrohm **Appellant**

versus

Ministry of Housing and Urban Development **1st Respondent**

Swaziland National Housing Board **2nd Respondent**

The Attorney - General **3rd Respondent**
Lungile Maseko **4th Respondent**
JM Mthethwa **5th Respondent**

Neutral Citation: *Debbie Sellstrohm v Ministry of Housing and Urban Development and 4 Others (25/2014) [2018] SZSC02 (27thFebruary, 2017)*

Coram: **JP ANNANDALE JA**

Heard: 12th February 2018
Judgment: 27th February 2018

Summary

Application to re-instate an appeal which was noted in June 2014, but subsequently struck off the roll in a previous session of the Supreme Court. Ordered that the appeal was not to be re-instated without leave of Court. Such leave now sought on application. Motion opposed - Matter originating from failed application to purchase a certain home, under auspices and control of National Housing Board, as long ago as 1997. Now, in 2018, the appeal is sought to be re-instated as a challenge to dismissal of review application in June 2014. Therein, it was "held further that there was an unreasonable delay in lodging the review proceedings and that no application for condonation was made", otherwise the Court would have been able to apply its mind whether the delay of thirteen (13) years is "… by any stretch of the imagination sufficient to constitute unreasonable delay in lodging review proceedings."

Yet again, no prospects of success averred in application to consider re-instatement. Inexplicable laxity by appellant to acquiesce passively in her attorney's unexplained marathon indisposition. No legitimate expectation to be either heard or granted such relief on appeal. Application itself yet again fraught with ineptitude, non-compliance with rules and practice directives.

Application for leave to re-instate hearing of appeal held to be utterly inadequate and dismissed with costs of only the 4th respondent ordered against applicant/appellant. Appeal deemed to have been abandoned.

JUDGMENT

Annandale JA

[1] This is an application to re-instate an appeal which has been removed from the rolls of the Supreme Court in a previous session due to non-compliance with the Rules of Court, coupled with a failure to apply for condonation of late filing of documents and heads of argument.

[2] The Court then ordered that the appeal shall not be re enrolled for hearing unless leave to do so has been sought and granted. The almost unthinkable history of continued and unexplained prolonged periods of apparent slumber, acquiescence or a sheer attitude of "don't care" yet again manifests itself in the current application. The appellant *qua* applicant now prays to have her repeated late filing of the record and heads of argument yet again to be condoned.

[3] This relief precedes the main and subsequent relief, which must have a reasonable chance of being successful if the appeal hearing is to proceed at all. A spot of arrogance might be detected in a further prayer for "costs of the application in the event of opposition by any party" should the 4th respondent be put out of pocket if he is advised. Should the respondent be put out of pocket if he is advised to oppose the application to re-instate an appeal which is now, yet again, sought to be enrolled to appeal the matter between them? The unexplained non-appearance by the chambers of the Attorney General, *ex officio* counsel for the Government, would best not be commented upon. Citation of the first three and fifth respondents is not merely cosmetic, as might be perceived in certain quarters. Nor is it helpful to the Court when their stance on the matter is not articulated at all.

[5] The requirements of an application for leave to re-instate an appeal which has previously been ordered to be removed from the rolls and not to be enrolled without prior leave of the court, on application, has been stated and re-stated *ad nauseam* in a phlethora of judgments. All local and nearby judgments are readily available on from the Swazi Lii website, free of charge and hard copies are also in wide circulation amongst the local legal fraternity. There is nothing secretive or sinister about it.

[6] The Rules of Court exist for a viable and indispensable purpose. Litigants on appeal are required to avail all relevant papers which are pertinent to an appeal to the opposition within certain stipulated periods of time, commencing with the noting of an appeal, through to arguing the matter in court. Preparations have to be made, such as a proper consideration of relevant matter and material, an examination of relevant legal principles and authorities, ultimately to be presented to the apex court for judicial pronouncement. It is not uncommon for legal practioners to anticipate or even find themselves already time barred under the Rules to file a certified record, legal authorities or heads of argument within the prescribed time limits. A failure to comply has its own remedies, but condonation for non-compliance with the Rules is the overriding key.

[7] It has repeatedly been stressed by this Court that legal practioners are enjoyned to “forthwith” apply for condonation of late filing as soon as it becomes apparent that exigencies of a situation has become such that deadlines will not be timeously met. Paramount in deciding an application for condonation of non-compliance with the Rules is the prospects of success in the main matter.

[8] When the initial hearing of the appeal was scheduled in a previous session, the appellant did not have her house in order. The matter was struck off the rolls due to non-compliance with Rules. The Court record, subject to be heard on appeal, was absent. So was the appellant's heads of argument and authorities. Most notable was the absence of any application to condone these anomalies.

[9] Astonishingly, when the applicant *qua* appellant sought to have the appeal reinstated, it yet again transpired that condonation for late filing of court record and heads of argument required to be sought. For unexplained reasons, no heads of argument were filed by counsel for the applicant. This Court does not accept the filing of heads over the bar, as Mr Dlamini attempted to do. In this second attempt to appeal a judgment which was delivered in June 2014, one would have thought that this time around, all the ducks would be in row, so to speak.

[10] Alas – the non-production of the appellant's heads of argument was overshadowed by the woefully inadequate application for re-instatement to motivate the relief. Most notable is the absence of a setting out of the potential prospects of success in the appeal itself, if it came to be heard. I reiterate the importance of persuading the Court that it should grant condonation because the appeal is

meritorious. As best as can be, it should be demonstrated that there is at minimum a reasonable chance that the impugned judgment may be overturned on appeal.

[11] In addition, good prospects of success militates against the delay in the course of bringing the condonation application for adjudication. A longer delay can more readily be accommodated when there are stronger chances of a successful appeal. The inverse hereof is obvious.

[12] *In casu*, the applicant's attorney of record filed an affidavit in support of the application to condone and reinstate. An entire sub paragraph is devoted to this crucial aspect, the threshold of allowing an otherwise time barred appeal to be re enrolled for hearing. It reads:

> "May I further states (sic) that I (sic) have prospects of success in this matter as stated in my Notice of Appeal hereto attached. It is my honest believe (sic) that the court *a quo* erred in fact and in law in granting the orders in the judgment".

[13] Apart from failing to attach the stated grounds of appeal, it does not serve the purpose of demonstrating reasonable prospects of

success in an intended appeal. The grounds of appeal to which reference is made may well form the backbone of such motivation, but in its bare and clinical form, the Notice of Appeal and grounds of appeal listed therein, remains inadequate to serve the purpose. Glaringly absent from the application is any explanation by the intending appellant as to why she did not instruct anyone else to prosecute her appeal. Seemingly, she simply sat back and allowed the effluxion of time to continue unabated. She does not say if the inordinately long delays posed any concerns to her at all. She does not say if any other attorney was approached to take over from her indisposed original lawyer. Nor if any attempts to do so were met by any impediment of whatever nature.

[14] The affidavit of her attorney is tacit as to any attempts which may have been made to ameliorate the consequences of his prolonged illness. The Notice of appeal was filed in June 2014, with his affidavit deposed to in November 2017, a very long time by any standard to seek condonation. Moreover, the decision that she wants to challenge was taken in 1997, some twenty years ago.

[15] Against this inordinately long delay, it behoves a recollection of what was said in Unitrans Swaziland Limited v Inyatsi

Construction Limited Civil Appeal Case 9 of 1996, where the Court held at paragraph 19 that:-

> "The Courts have often held that whenever a prospective Appellant realizes that he has not complied with a Rule of Court, he should, apart from remedying his fault, immediately also apply for condonation without delay".

[16] In Timothy Khoza v Piggs Peak Town Council and Another, (51/2015) [2017] SZSC 08(12/2017), the Court also referred, with approval, to Commissioner of Inland Revenue v Burger 1956 (4) SA 446 (A) in which Centlivres CJ said at 449 –G that:

> "…whenever an Appellant realises that he has not complied with the Rules of Court he should, without delay, apply for condonation."

[17] Yet again, in Dr. Sifiso Barrow v Dr. Priscilla Dlamini and the University of Swaziland (09/2014) [2015] SZSC 09 (09/12/2015) the Court stated at paragraph 16 as follows –

> "It has repeatedly been held by this Court, almost *ad nauseam*, that as soon as a litigant or his Counsel becomes aware that compliance with the Rules will not be possible, it requires to be dealt with forthwith without any delay."

[18] That the applicant's herein has a history of delay, inactivity and disregard of the Rules in this particular matter has yet again manifested in the *liassez–faire* manner in which reinstatement is sought.

[19] Seemingly, the repeated judicial pronouncements on these issues, non-compliance and condonation, has not yet reached the attention of applicants counsel. The same procedural defects sadly carry on unabatedly. Some twenty years have by now passed since the late and most respected Steyn JA remarked on the importance of compliance with the Rules, and the consequence of disregarding same. In Simon Musa Matsebula v Swaziland Building Society, Civil Appeal No.11of 1998, he stated the following:

> "It is with regret that I record that practitioners in the Kingdom only too frequently flagrantly disregard the Rules. Their failure to comply with the Rules conscientiously has become almost the rule rather than the exception. They appear to fail to appreciate that the Rules have been deliberately formulated to facilitate the delivery of speedy and efficient justice. The disregard of the Rules of Court and of good practice have so often and so clearly been

disapproved of by this Court that non-compliance of a serious kind will henceforth result in procedural orders being made such as striking matters off the roll – or in appropriate orders for costs, including orders for costs *de bonis propriis*. As was pointed out in Salojee v The Minister of Community Development 1965(2) SA 135 (A) at 141. '…there is a limit beyond which a litigant cannot escape the results of his Attorney's lack of diligence'. Accordingly, matters may be well struck from the roll where there is a flagrant disregard of the Rules even though this may be due exclusively to the negligence of the legal practitioner concerned. It follows therefore that if clients engage the services of practitioners who fail to observe the required standards associated with the sound practice of the law, they may find themselves non-suited. At the same time the practitioners concerned may be subjected to orders prohibiting them from recovering costs from the clients and having to disburse these themselves."

[20] That this matter has the source of complaint inordinately long ago bears no argument. By now, over 20 years have passed since July 1997 when the second respondent declined the application to allocate house number 259, situate at Two Sticks Extension 3, Zakhele Township in Manzini, to the applicant/appellant. That decision was eventually taken on review and dismissed by the

High Court in June 2014. It is this decision which is now, yet again, sought to be appealed against.

[21] *Inter alia*, dismissal of the review application was due to an unreasonable delay in lodging the review proceedings and that no application for condonation was made. With reliance on Lion Match Co. Ltd v. Paper Printing Wood and Allied Workers Union 2001(4) SA 149 (SCA) 156 and Mamabolo v Rustenburg Regional Local Council 2001 (1) S.A 135 (SCA) at 141, MCB Maphalala J (as he then was) held in the court below that:

> "It is trite law that an applicant for review who fails to bring the application within a reasonable time may lose his right to complain of the irregularity in regard to which the review is brought in the absence of condonation. A period of thirteen years is by any stretch of imagination sufficient to constitute unreasonable delay in lodging review proceedings. No application for condonation was available for consideration".

In my *prima facie* view, the probabilities of successfully assailing this aspect on appeal is remote.

[22] Accordingly, where the High Court did not have an application for the late filing the record, heads of argument or bundles and lists of authorities to consider in the first instance, it cannot now be subjected to an appeal on the merits of the decision on that point. Simply put, matter and legal argument that was not subject to determination in a court *a quo* cannot be revisited on appeal to a superior court. New issues are invariably not dealt with on appeal.

[23] In the present matter from the High Court, the learned MCB Maphalala J, as he then was, declined to hear a hopelessly outdated application for judicial review of the decision by a Governmental National Housing Board which took thirteen (13) years to reach the Superior Courts of Law for judicial review of an administrative decision.

[24] Even though the refusal to allocate the specific house to the applicant/prospective appellant was not appealed against in the statutory prescribed parameters, it still did not derogate from the inherent right to appeal the impugned decision by the Board. Internal procedures and avenues may well be laid down by relevant directives, but it *prima facie* cannot preclude judicial review on the basis that all available local remedies have not been exhausted.

Such rationale might well find application in international law, courts of the African Union and other Regional Courts on the continent, but it did not and cannot bar a judicial review by the High Court of this jurisdiction.

[25] The *ration decidendi* of the judgment handed down in June 2014 made it clear that over and above the unmeritorious decision which was sought to be set aside on review and substituted with one which was favourable to the applicant, the court could not judicially consider the substance of the complaint, *inter alia* because by then it was already far beyond the "use by" or "expiry" date. This was because the applicant did not even bother to bring an application to condone the prolonged delay as well as the condonation of patently obvious laxity or ineptitude in eventually taking the decision on review, so many years afterwards.

[26] Where an issue such as this, the delay in seeking to obtain judicial review of an administrative decision, which did not exhaust the available avenues to appeal the original decision, and which furthermore was absent from any application to condone the unduly protracted delay, was not placed before the Court *a quo,* it is not an appealable aspect of the judicial process and

pronouncement. It is trite law that new matter is not to be ventilated on appeal.

[27] Where the High Court was not tasked to determine the merits of a non-existent condonation application, it simply cannot form the substrata of an appeal to a Superior Court. The Supreme Court is not a Court of first instance where the merits of new issues such as this can be adjudicated upon.

[28] If the finding of the Court *a quo* was to have been challenged in the course of an appeal hearing where the issue of delay was to have been considered, cognizance could well be taken of Lion Match Co Ltd vs Paper Printing Wood & Allied Workers Union and Others 2001 (4) SA 149 (SCA), where the Court held:

> "… that it was an established rule in review proceedings that an Applicant for review who failed to bring an application within a reasonable time might, unless the delay could be condoned, lose the right to complain of the irregularity in regard to which the review had been brought. Where such an unreasonable delay occurred, the Applicant was required to furnish an explanation in anticipation of the delay being

raised as a bar to his claim by either the Respondent or the Court".

[29] The concept of a "reasonable time" could arguably be equated to the length of a piece of string. It all depends on the prevailing circumstances, a mixed bagful of inputs.

[30] Radebe v Government of the Republic of South Africa and Others 1995 (3) SA 787 (N) the court stated that

> "Whilst an appeal has to be noted and prosecuted within specified time limits, no such limits have been specified for the institution of review proceedings of this nature. In the absence of a statutory limit, the courts have, however, in terms of their inherent powers to regulate procedure, laid down that review proceedings have to be instated within a *reasonable time*…"(my emphasis)

[31] Even though the application to reinstate the previously struck off appeal should fail on this ground alone, the disgruntled applicant may rest assured that this is not the one and only reason to refuse access to further judicial proceedings in her matter.

[32] As noted above, the hearing of her application was not "Moonshine and Roses". Her attorney of record, Mr Kush Vilakati, under an obviously clear misapprehension of the role of legal practioners in this jurisdiction, thought that all defects and delays would simply be overlooked because of his medical indisposition. However, as colloquially may said in some quarters, the "bones did not fall in the right place.

[33] Firstly, he did not bother himself by even remotely referring to just what went wrong with himself. Nor how such unstated condition would cause his unavailability to further deal with the issue of his client. Nor does he say why someone else from his law office could not deal with the matter. In the event, Mr Snyman signed the legal documents and appeared in court as "Junior Counsel" for Mr Dlamini. Mr Vilakati, whose indisposition was held out as a rescue attempt to rescue a lost cause, did not even appear at the hearing of the application. The applicant herself did not have a single word to say about the "Rip Van Winkle" effect on her case. In court, her lawyer did not even avail his heads of argument, allegedly filed in time for consideration, at all. It required repeated invitations from the bench to at least speak some few words on the various facets of the matter.

[34] *Ex abundanti cautela,* and in the event that the applicant herself might read this judgment, the non-appealability of her time-barred appeal is not the one and only ground to refuse reinstatement of her lapsed appeal.

[35] The absence of motivation in support of her prospects of success on appeal do not favour her at all. Nevertheless, the only point of reference lies within her stated "grounds of appeal", ostensibly incorporated by reference.

[36] The Notice of Appeal which is exclusively relied upon as a vehicle to convey her prospects of success on appeal should it be re-instated reads as follows:-

> "1. The learned judge in the court *a quo* erred in fact in dismissing the Appellant's application as if it was under Civil Case No: 610/2013 when that matter had nothing to do with the matter then before the judge.
>
> 2. The learned judge in the court *a quo* erred in fact and law in assuming that house No. 259 Two Sticks Extension 3, Zakhele Township in Manzini was

allocated to the 4th Respondent in dismissing the Application.

3. The learned judge in the court *a quo* erred in fact in assuming that the fourth Respondent ever lived in the property when hen he arrived at his judgment.

4. The learned judge in the court *a quo* erred in fact and in law when he failed to determine how the 4th Respondent's mother could be allocated two houses when that was not the norm in 2nd Respondent's practice in the allocation of houses at Two Sticks.

5. The learned judge in the court *a quo* erred in fact and in law when he disregarded all but one of the minutes of the 2nd Respondent and on the basis of those minutes, that of the 28th July 1997, dismissed the Application.

6. The learned judge in the court *a quo* erred in fact and in law by totally disregarding ANNEXURES "F" and "G" in ruling that there was an unreasonable delay in bringing the Application before court."

[37] In argument, Mr Gama who acts for the 4th respondent, successfully and persuasively sought to make short shift with regard to each of the stated grounds of appeal.

[38] Firstly, the reference to another case number is immaterial. The Court *a quo* was not bamboozled into deciding a different case other than the one as presented to it. Reference to case number 2304/2015 would have been correct, whereas the stated number of case 610/2013 as being the applicable but incorrect reference, present no more than a technical challenge, not subject to appeal but if it is of such importance, could easily and expeditiously be corrected on mere request.

[39] The second ground of appeal is equally spurious. The first prayer in the Notice of Motion dated the 15th June 2010, was to review and set aside or correct the decision of the Ministry of Housing and Urban Development and the Swaziland National Housing Board to allocate the particular house “to the Fourth Respondent”, (instead of the applicant).

[40] That the learned judge *a quo* is now challenged for "assuming" that the house was allocated accordingly when he dismissed the application, in accordance with the claimed relief, requires much more indepth scrutiny to determine the actual validity of the allegation. *Prima facie*, and without further exposition, it does not justify a potentially successful ground of appeal.

[41] The third ground of appeal, concerning the speculative assumption that the 4th respondent ever occupied the premises, is devoid of a factual basis when the judgment is read. Possibly it is a subjective conclusion which is drawn by the applicant, bat as such, no words shall be laid in the mouth of the presiding judge unless substantiated. This is not done and this point joins the queue of other than good enough and meritorious possibilities of being successful on appeal.

[42] Fourthly, the question of whether the court failed to determine how the mother of the 4th respondent could ever be allocated two different houses in the area, was not an issue to decide on review. In fact, the learned judge remarked that it remained unclear as to just exactly how the house was initially acquired or that a further or second house was allocated to the mother of the 4th respondent.

[43] The 5th ground of appeal, yet again merely incorporated by reference to it but devoid of any stated motivation as to the viability of a successful appeal after so many years, is concerned with certain documents which were before the Court. Minutes of Meetings were allegedly disregarded whilst others were given consideration.

[44] In fact, the meeting of the 28th July 1997, which eventually gave rise to an application for review, was the "grundnorm" of the review application. It was there when the criteria for allocation of houses was not only explained to the applicant but was also the *ratio* for not acceding to her request. It is the result of that hearing, in 1997, which was unsuccessfully persued on review, thereafter held out as ground of appeal, but which does not now automatically result in furthering the quest to establish a reasonable prospect of success, without further ado.

[45] Sixthly, to say that an intented appeal has good chances of being successful simply because some annexures in the impugned review were "totally disregarded" by the Court *a quo*, yet again is unpersuasive. These annexures establish the rationale for refusal

of her requested allocation of a specific house, as well as the date when it was done, some thirteen years earlier.

[46] Moreover, the applicant still fails to appreciate that by effluction of time, her delay in seeking a review of that decision requires a detailed and plausible explanation in conjunction with a plea for condonation of the prolonged and extracted procrastination. In the absence of that, and without an explanation as to why it should now be able to alter her misfortune, it yet again does not warrant the relief she now seek. Adding insult to injury, the "ignored" documents *prima facie* show that she was made aware of her legal remedies, including a judicial review, since October 1998.

[47] Apparently, the trigger which so belatedly set off the application for review and which is now sought to be appealed against, was the receipt of a summons by which her ejectment from the premises was sought. Yet again, in the absence of any explanation for the delay in seeking to have the judicial process step in to the rescue after all these years, and stating just how it in fact would enhance the chances of successfully appealing the dismissed review application, does not further her case at all. She was duty bound to

explain the cause of delay and to justify an application to condone it.

[48] Yet, I have not been presented with any plausible reason to order a re-instatement of an unmeritorious appeal amounting to a delay of over twenty years - yes 20 years – cannot by any yardstick be merely overlooked. No justification has been proffered either.

[49] *En Passant*: During the hearing of this matter, it transpired that in addition to the abovementioned aspects and dimensions of the applicant's request to be granted leave to reinstate an unmeritorious appeal, originating from interactions between the parties some twenty years ago, the applicant's counsel apparently had yet a further arrow in his quiver.

[50] Ostensibly, the applicant *qua* appellant would have been said to have had a "legitimate expectation" to be heard. To cut a long story short, it is not an issue which has ever been brought before any court before. Certainly, it is not included in any of the stated grounds of appeal.

[51] The Rules of this Court require of legal practitioners to assist the Court, as duty bound, to come to the correct conclusion on legal matters before it. The apex Court in this magnificent Kingdom of Eswatini hears appeals from the High Court, such as the one at hand. It is trite law and practice in this jurisdiction, as well as in many countries elsewhere, that an appellant shall not belatedly add and argue a further ground of appeal, unless leave to do so has been obtained.

[52] *In casu,* the further and final argument which Mr Dlamini, "with him junior counsel Mr Snyman," a lawyer in the practice of applicant's attorney of record, sought to have advanced is this: "a legitimate expectation."

[53] The requirements relating to the legitimacy of the expectation upon which an applicant may seek to rely have been most pertinently drawn together by Heher J in National Director of Public Prosecution v Phillips and Others 2002 (4) SA 60 (W), para 28. He said:

> "The law does not protect every expectation but only those which are 'legitimate'. The requirements for legitimacy of the expectation, include the following:

i) The representation underlying the expectation must be clear, unambiguous and devoid of relevant qualification': De Smith, Woolf and Jowell (*op cit*) [Judicial Review of Administrative Action 5th ed] at 424 para 8-055. The requirement is a sensible one. It accords with the principle of fairness in public administration, fairness both to the administration and the subject. It protects public officials against the risk that their unwitting ambiguous statements may create legitimate expectations. Is it also not unfair to those who choose to rely on such statements. It is always open to them to seek clarification before they do so, failing which they act at their peril.

(ii) The expectations must be reasonable: Administrator, Transvaal v Traub [1989] ZASCA 90; [1989 (4) SA 731 (A)] at 7561 – 757B); De Smith, Woolf and Jowell (supra at 417 para 8-037).

(iii) The representation must have been induced by the decision-maker: De Smith, Woolf and Jowel (*op cit* at 422 para 8-050); Attorney-General of Hong Kong v

NgYuen Shiu [1983] UKPC 2; [1983] 2All ER 346 (PC) at 350h-j.

(iv) The representation must be one which it was competent and lawful for the decision-maker to make without which the reliance cannot be legitimate: Hauptfleisch v Caledon Divisional Council 1963(4) SA 53 (C) at 59E-G".

(per E. Cameron JA, with Howie P, Olivier JA, Strecher JA and Lewis JA concurring, in South African Veterinary Council and Another v Szymanski (79/2001) [2003] ZASCA 11 (14 March 2003)).

[54] Then, in para 21, Cameron JA continues and authoritatively says:

"It is worth emphasizing that the reasonableness of the expectation operates as pre-condition to its legitimacy. The first question is factual – whether in all the circumstances the expectation sought to be relied on is reasonable. That entails applying an objective test to the circumstances from which the applicant claims the expectation arose. Only if that test is fulfilled does the further question – whether in public law the expectation is legimate – arise."

[56] It does not need the wisdom of a Solomon, nor that of a rocket scientist, to conclude the inevitable outcome of this matter. In these circumstances, precedent is established to the effect that there comes an end to the road. Time's up, finito.

[57] The final straw on the camel's back is always an order that an appeal has been abandoned. Cases such as: Tsabedze v University of Swaziland [2011] SZSC Swazilii. Org 16 and Thokozile Dlamini v Chief Mkhumbi Dlamini and the Commissioner of Police, Civil Appeal No.2/2012; (Dlamini v Dlamini and Another [2010] SZSC 30), come to mind.

[58] Legal precedent in the Supreme Court is that the deeming of appeal cases as having been abandoned result in the final end of any matter which has been brought before the Courts of Law. (See also Timothy Khoza v Piggs Peak Town Council and Ian van Zuydam (51/2015) [2017] SZSC 08 (12/2017)).

[59] *In fine*, it would be a serious remiss on my behalf to not express my personal sympathy with the plight of the applicant. However it came into being, she holds the honest belief in her entitlement to

the home she abides in. Her inevitable eviction has now been sought to be ordered, after all the years of thinking that she has a home. Apart from taking the matter further in prayer, she cannot be advised.

[60] In the final result, the order of the Supreme Court of Swaziland is thus:

1. The application for leave to re-instate the appeal herein for hearing thereof be and is hereby dismissed;

2. The appeal as noted on the 30th day of June 2014 is hereby ordered to be deemed as abandoned; and

3. Costs of the 4th respondent shall be borne by the applicant/appellant, on the ordinary party and party scale.

JACOBUS P. ANNANDALE
JUSTICE OF APPEAL

Counsel for the Applicant: Messrs M. Dlamini and C Snyman

Counsel for the 1st, 2nd, 3rd, and 5th Respondents: No appearance

Counsel for the 4th Respondent: Mr L. Gama