



IN THE SUPREME COURT OF ESWATINI

JUDGMENT

HELD AT MBABANE

CIVIL CASE NO: 76/2022

In the matter between:

ERIC THAMSANCA ZWANE

Applicant

and

PADDON MABUZA

Respondent

In re:-

PADDON MABUZA

Appellant

And

ERIC ZWANE

Respondent

Neutral Citation: *Eric Thamsanca Zwane vs Paddon Mabuza (76/2022) [2023] SZSC 31*
(31 July 2023)

CORAM: **S. P. DLAMINI JA**

DATE HEARD: 31 July, 2023

DATE DELIVERD: 31 July, 2023

Summary: *Civil Law and Procedure- Application to deem the appeal abandoned granted with costs at an attorney and own client's scale de bonis propriis*

ABRIDGED JUDGMENT

S. P. DLAMINI – JA

INTRODUCTION

[1] The matter falling for consideration by this Court is an interlocutory application by the Applicant who is the Respondent in the appeal.

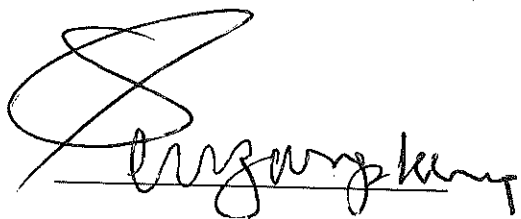
[2] The Respondent who is the Appellant in the appeal launched the appeal on 18 October 2022.

[3] Contrary to the dictates of Rule 30(1) the Respondent did not file the record. In addition, the Respondent did not file any additional papers including Heads of Argument and Bundle of Authorities.

- [4] The matter was duly enrolled for hearing and the Applicant served a notice of set down. Notwithstanding that the matter was duly enrolled and set down, when the matter was called for hearing there was no appearance for the Respondent.
- [5] The Court instructed an officer of Court to call the name of the Respondent three times and there was no response.
- [6] Mr. M. Mntungwa for the applicant, insisted on the relief sought in the application.
- [7] The Court is satisfied that the Applicant's application has met all the requirements for relief sought and it is accordingly granted by the Court.
- [8] Accordingly, the appeal is deemed to have been abandoned by the Appellant and thereby dismissed on its costs.
- [9] It was observed in the judgment *a quo* that the resistance by the Respondent to the application for summary judgment was purely dilatory and without merit.

[10] This coupled with the behaviour of the Respondent's Attorney of not appearing before this Court, justifies the award of costs on an Attorney and own client's scale *de bonis propriis*.

[11] Courts are usually at loath to award punitive costs particularly *de bonis propriis*. However, I will depart from this usual disposition of our courts and due to the reasons already stated above. I order the dismissal of the appeal with costs at an Attorney and own Client's scale and the costs to be paid by the Respondents' Attorney.



S. P. DLAMINI

JUSTICE OF APPEAL

FOR THE APPLICANT: M. Mntungwa
(Dynasty Inc. Attorneys)

FOR THE RESPONDENT: No appearance