

IN THE SUPREME COURT OF ESWATINI
JUDGMENT

Case No. 60/2023

HELD AT MBABANE

In the matter between:

CAR POINT (PTY) LTD

Applicant

And

INTAMAKUPHILA TRANSPORT (PTY) LTD

1st Respondent

KHANN JAPAN INVESTMENTS (PTY) LTD

2nd Respondent

In re:

INTAMAKUPHILA TRANSPORT (PTY) LTD

1st Appellant

KHANN JAPAN INVESTMENTS (PTY) LTD

2nd Appellant

And

CAR POINT (PTY) LTD

Respondent

Neutral Citation:

*Car Point (Pty) Ltd vs Intamakuphila Transport (Pty) Ltd
and Another In re: Intamakuphila Transport (Pty) Ltd and
Another vs Car Point (Pty) Ltd (60/2023) [2024] SZSC
71(28/03/2024)*

Coram:

J.M. CURRIE JA (sitting as a single Judge).

Heard: 27 February, 2024.

Delivered: 28 March, 2024.

SUMMARY : *Civil procedure – Application to declare appeal deemed abandoned in terms of Rule 30 (4) – Appeal filed after expiry of dies in terms of Rule 8 (1) – In terms of Rule 8 (2) which is peremptory Registrar of Supreme Court not to file any notice of appeal after such expiry unless leave to appeal out of time has been sought and granted – Registrar erroneously accepted late notice of appeal and appeal thus improperly before this Court – No application for condonation to explain non-compliance with the Rules – Appeal struck out – Costs awarded to the applicant.*

JUDGMENT

J.M. CURRIE – JA

INTRODUCTION

[1] This is an application to declare the appeal dated 26 July 2023 filed by the first respondent/appellant deemed abandoned in terms of Rule 30 (4) of the Court of Appeal Rules 1971.

[2] The applicant, Car Point (Pty) Limited/ plaintiff in the court *a quo*, instituted motion proceedings against the respondents claiming possession and control of Lot 681, 7th Street, Matsapha and ancillary relief.

[3] Judgment was granted in favour of the applicant on 23 June 2023 as follows:

“(a) The First Respondent is directed to restore possession and control of the property described as Lot 681,7th Street, Matsapha forthwith.

(b) The First respondent is ordered to pay costs of this application at the ordinary scale”

NOTICE OF APPEAL

[4] Being dissatisfied with the judgment of the court *a quo* the appellant presented the Registrar of the Supreme Court with a notice of appeal on 26 July 2023.

[5] Rule 8 of the **Court of Appeal Rules 1971** provides as follows:-

Rule 8 (1) “The Notice of Appeal shall be filed within four weeks of the date of the judgment appealed against:

Provided that if there is a written judgment such period shall run from the date of delivery of such written judgment:

....

Rule 8 (2) provides that:

"The Registrar shall not file any Notice of Appeal which is presented after the expiry of the period referred to in paragraph (1) [four weeks] unless leave to appeal out of time has previously been obtained". (my underlining)

[6] Rule 8 is peremptory and requires strict compliance with the rules. Therefore if a litigant wishes to appeal a judgment, the notice of appeal must be filed within the four week period referred to above, failing which no appeal shall be enrolled unless leave to appeal out of time has been sought and obtained.

[7] Although no record has been filed, it is common cause that judgment was granted on 23rd June 2023, which date is contained in the notice of appeal and in the application by the applicant for an order declaring the appeal deemed abandoned. The appellant ought, therefore, to have filed its notice of appeal by or before the 24th July 2023 but instead filed and served same on 26 July 2023, without having sought for an extension of time in terms of Rule 16 ,

[8] The above Rules are clear and unambiguous and set out the obligations of a party who notes an appeal and if such party is unable to comply with the above rules to avail himself of the remedies available in terms of Rules 16 and/or 17 above.

FINDINGS OF THE COURT

[9] In the present matter it is clear that the respondent/appellant disregarded the rules of this Court and nonchalantly filed its notice of appeal out of time and contrary to Rule 8 in terms of the rules and there is no explanation whatsoever before this Court as to why the appellant has failed to prosecute the appeal. Nor is there any application seeking to remedy such default.

[10] In the circumstances there is no appeal pending before this Court. This issue has been considered and decided by this Court in several matters, for instance in the matter of **Maduna And Others v Junior Achievement Swaziland (105 of 2017) [2018] SZSC 31 (18 September 2018)** where the Court, per the Honourable Justice S.P Dlamini, held as follows:

“[18] Rule 8 (2) directs the Registrar in clear peremptory terms that he or she “shall not” file any notice of

appeal which is presented after the expiry of the 4 weeks period without leave to appeal out of time sought and granted by the Court first.

[19] There was no such leave sought and granted in this matter. Therefore, the Registrar ought not to have accepted and filed a notice of appeal that was out of time without an application being heard and granted by this Court and allowing the appeal to proceed.

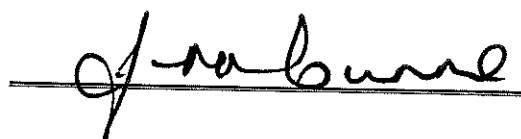
[20] It follows that the matter is not properly before Court and therefore there is no appeal pending and falling for consideration by this Court. In view of the incontrovertible fact which was also admitted by Mr Dlamini for the Appellants that the notice of appeal was filed out of time, a legal *cul de sac* is unavoidable. The Appellants were represented at the hearing of the matter and when the Judgment was delivered at the Court *a quo*. The assertion by Mr Dlamini for the Appellants that the dies is supposed to be calculated from the date of service of the court order and judgment has no merit and stands to be dismissed.

[21] In view of the above findings of this Court there are no other issues that require consideration. However, it is apposite at this juncture to caution the office of the Registrar that where the Rules preclude the office from accepting processes that are out of time, that is must be done so at all times in a uniform fashion. Therefore, the phenomenon whereby filing of papers which are out of time is allowed in certain cases and rejected in others must stop forthwith. In this matter the Respondent's Attorneys wrote a letter to the Registrar that the Appellant's Notice of Appeal was filed out of time. It appears that the Registrar neither acknowledged nor responded to the said letter and the office of the Attorney General was downright dismissive of the letter. "

[11] The above dictum was confirmed in the matters of **United General Insurance vs Didak Parmer In re: Didak Parmer vs United Insurance Limited (07/2023) [2023] SZSC 44 (19/10/2023)** and **Nomsa Dlamini obo 242 vs Liquidator Royal Swazi Spa and Subsidiaries N.O and Others (15/2023) [2023] SZSC 48 (6 December 2023)**.

[12] In view of the foregoing, the following order is made:

1. The notice of appeal dated 26 July 2023 is struck out.
2. There is no appeal pending before this Court.
3. Costs are awarded to the applicant.

A handwritten signature in black ink, appearing to read 'J. M. Currie', is written over a horizontal line.

J. M. CURRIE
JUSTICE OF APPEAL

For the Appellant: MR. M. MAGAGULA, ZONKE MAGAGULA &
COMPANY

For the Respondent: MS. S. MATSEBULA, S.S.T. MATSEBULA
ATTORNEYS