



IN THE HIGH COURT OF SWAZILAND

HELD AT MBABANE

Case No: 1989/13

In the matter between:

ANDREW RUGONGO

APPLICANT

and

SIBONGILE NGWENYA

RESPONDENT

In Re:

SIBONGILE NGWENYA

APPLICANT

and

**ANDREW RUGONGO
NDABAZABANTU – MANZINI
LOGOBA ROYAL KRAAL**

**1ST RESPONDENT
2ND RESPONDENT
3RD RESPONDENT**

Neutral Citation : Andrew Rugongo vs. Sibongile Ngwenya (1983/13)
[2016] SZHC 106 (30 JUNE 2016)

Coram : Q.M. MABUZA J

Heard : 29 APRIL 2016

Delivered : 30 JUNE 2016

SUMMARY

PRACTICE – PLEADINGS – WHETHER APPEAL TO SUPREME COURT NOT PROSECUTED WITHIN THE TIME LIMITS IS DEEMED TO BE ABANDONED – APPLICATION DISMISSED – HIGH COURT NO LONGER *FUNCTUS OFFICIO* AND HAS NO JURISDICTION TO HEAR MATTER – APPLICATION DISMISSED WITH COSTS ON THE ORDINARY SCALE.

JUDGMENT

MABUZA –J

[1] In this matter the Applicant, Andrew Rugongo an adult male of Logoba seeks the following prayers:

- (a) That Respondent’s appeal be deemed to be abandoned.
- (b) That Respondent pays the costs of the application.
- (c) Any further and/or alternative relief.

[2] The application is opposed by the Respondent, Sibongile Ngwenya an adult female of ka Bhokinkosi residing at Logoba area in the Manzini District.

- [3] I am unaware of the facts founding the original cause of action. The facts that I am privy to are found in the judgment of my sister Lady Justice M. Dlamini delivered on 10th November 2015 between the same parties.
- [4] It would appear that Ms. Ngwenya was evicted from premises that she resides in at Logoba per order of Ndabazabantu-Manzini (2nd Respondent) and Logoba Royal Kraal (3rd Respondent) I am not sure what the Applicant's role is in those proceedings.
- [5] Nevertheless, Miss Ngwenya obtained an interim order from this Court interdicting and restraining the Respondents from interfering with the homestead where Miss Ngwenya was residing pending an appeal that she had lodged at Ludzidzini. The Respondents filed a counter-application for a discharge of the interim order on the basis that there was no appeal pending at Ludzidzini.
- [6] Indeed this Court found that there was no appeal pending at Ludzidzini and dismissed Ms. Ngwenya's application and discharged the interim order that she had earlier obtained. There was no order as to costs.

- [7] Ms. Ngwenya's lawyer Mr. Nzima appealed against the decision of the High Court. The notice of appeal bears the High Court stamp of the 10th December 2015 and was served on Mr. Simelane's offices on the 11th December 2015.
- [8] In terms of Rule 30 (1) of the Court of Appeal Rules, the Respondent (Ms. Ngwenya) is obligated to prepare, file and serve a certified record of proceedings within two months of noting the appeal. The Respondent is enjoined by this rule to serve the Applicant with such record.
- [9] The Applicant contends that the Respondent has failed to comply with Rule 30 (1). She has not prepared and served him and the Registrar with such record of the proceedings with the requisite two months.
- [10] The Applicant further contends that the Respondent has not applied for nor been granted an extension of time by the Chief Justice as contemplated by Rule 16 (1) of the Court of Appeal Rules.
- [11] Thus the Applicant concludes that in terms of Rule 30 (4) of the Court of Appeal Rules, if the record of proceedings has not been filed and served

within two months, the appeal shall be deemed to have been abandoned and submits that this is what happened *in casu*.

[12] Ms. Ngwenya in her affidavit opposing the application raised points *in limine* as follows:

- (a) That this Court is *functus officio* as it had already dealt with the matter and made a ruling in that regard hence this Honourable Court is not in a proper position to hear and determine it”.
- (b) That the judgment of the 10th November 2015 is incomplete. This is premised upon the fact that it was based on the main application and the contempt aspect has not been dealt with.
- (c) That this is a matter to be determined by the Supreme Court. It is the Supreme Court that has the authority to determine whether or not the Appeal has been abandoned or not.”

[13] I agree with the Respondent’s points *in limine* and hereby uphold them.

[14] Furthermore, the applicant’s computation of time is erroneous. The last session of the court year ended on the 18th December 2015. Thereafter the Court went on recess until 25 January 2016. Surely this period interrupts the computation of two months.

[15] The application is dismissed with costs.

JUDGE Q.M. MABUZA
JUDGE OF THE HIGH COURT

For the Applicant : Mr. O. Nzima

For the Respondent : Mr. B.J. Simelane