



**IN THE HIGH COURT OF ESWATINI**

**JUDGMENT**

Held at Mbabane

Case No. 592/19

In the matter between:

**BUCKSWOOD HOUSE SWAZILAND**

**PLAINTIFF**

**AND**

**WOODCRAFT PRODUCTS**

**DEFENDANT**

**Neutral citation:** *Buckwood House Swaziland vs Woodcraft Products [592/19]*  
*[2021] SZHC 136 (8 September, 2021)*

**Coram:** FAKUDZE, J

**Heard:** 12/06/2021

**Delivered:** 08/09/2021

**JUDGMENT**

**BACKGROUND**

[1] Serving before court is an Application for rescission of a judgment of this court granted on the 28<sup>th</sup> May, 2021. The Application was moved subsequent to a noting of an Appeal by the Applicant on the 29<sup>th</sup> March,

2019 against judgment granted in favour of the Respondent by the Siteki Magistrate's Court.

- [2] Having noted the Appeal, a period of more than two years lapsed without the Appeal being prosecuted. The Respondent then launched an Application seeking a declaratory order to the effect that such appeal be deemed to have lapsed or abandoned. The Notice of Set Down was served upon the Applicant's attorney on the 5<sup>th</sup> May, 2021 and was heard on the 28<sup>th</sup> May, 2021. No one appeared on behalf of the Applicant. The court then issued an Order in favour of the Respondent. This is the order that the Applicant wants the court to rescind.

### **The Parties' case**

#### **Applicant**

- [4] The Applicant's case is that the Order that was obtained by the Respondent was:-
- (a) obtained in the absence of the Applicant;
  - (b) obtained without following the Rules of the Court; and
  - (c) prejudicial to the Applicant and should therefore be rescinded.
- [5] The Applicant states that it should be given an opportunity to present its case on Appeal. It concedes that same was not prosecuted and therefore has

lapsed because the Record from the *court a quo* was never forwarded to the Registrar.

- [6] It is argued that the Respondent must prove the prejudice it will suffer should the appeal be heard. In this case he has not done so. Failure to prosecute the appeal was a result of the non-transmittal of the Record and this serves as a reasonable excuse. Rescission should therefore be granted.

### **The Respondent**

- [7] The Respondent states that reasons for the rescission must be clearly spelt out by the party seeking such. In the case before court, the Applicant has failed to state the grounds upon which rescission must be granted in terms of the Rules and the Common Law.
- [8] The Respondent further states that the reasons furnished by the Applicant was that the previous attorney assured the Applicant that the Appeal was awaiting written reasons by the *court a quo*. That is why the Applicant did not even bother to appear in court having been served with a Notice of Set Down declaring that the Appeal be deemed abandoned. Not only is the reason unsound, there is no error in the face of the record that may justify the rescission in terms of Rule 42.

## **COURT'S ANALYSIS AND CONCLUSION**

[9] There is no basis upon which the Applicant's case is based. Under common law and Rule 31 (3) (b), the Applicant has failed to establish a reasonable explanation as to why he did not prosecute the Appeal on time. Further when the matter was set down with respect to the Application for deeming the appeal to be abandoned, the Applicant did not take any step to contest the Application. Under Rule 42 (1) there was no error in the Record. The court properly granted the abandonment Application. The Application for Rescission is therefore dismissed with costs.



FAKUDZE J.

JUDGE OF THE HIGH COURT

APPLICANT: L. SIMELANE

RESPONDENT: S. NGWENYA