INDUSTRIAL APPEAL COURT OF SWAZILAND

SANDILE MASEKO & OTHERS
Appellant

vs

TIGER GROUP LIMITED
Respondent

Appeal Case No. 3/2002

Coram	SAPIRE, JP MATSEBULA, JA MAPHALALA, JA
For appellant	A. SHABANGU
For Respondent	P. GWEBU

JUDGMENT
(22/04/2002)

The appellants are contesting the validity of a ruling of the Industrial Court of Swaziland given on the 7th November, 2001.

The ruling was made in a case in which the appellants had sued the respondents for residual payments, which they claim, were due to them. The defence of the respondent was that the applicants were in December 2000 paid in full and final settlement of the monies and benefits due to them and as such they have no further claims against the respondent.

On the 29th August 2001 this defence was argued in the absence of the appellants' representative who failed to appear and was in default. The matter had earlier on the 20th August 2001 been set for argument but was postponed at the instance of the appellants for 29th August 2001. On the 29th August 2001 counsel for the appellants did not appear and no explanation was given to the court for his absence.

Mr. Gwebu who appeared for the respondent proceeded to argue the question raised by the plea in the absence of the appellants. In support of his argument he produced from the bar a bundle of documents comprising receipts by all the appellants reflecting payments of terminal benefits itemised as backpay, leave pay, member's notice, overtime and uniform refund. The appellants duly signed all the vouchers and the legend on each is

> *"I hereby receive this payment as full and final payment and I have no further claim against the company at all."*

In the absence of the applicants the court admitted the documents and came to the conclusion that all the claims arising from termination of employment of the appellants had been discharged.

Accordingly the court upheld the defence and the claims by the appellants were dismissed. No order as to costs was made.

The appellants have noted an appeal against this decision and the question arises whether the appeal has been properly noted.

The case of **Sparks vs David Polliack and Company (Pty) Ltd 1963 (2) 491** it is authority that a default judgment under rule 55(2) of the Magistrate Court Act of South Africa, becomes final and therefore appealable when it is no longer rescindable. The headnote recites that a judgment had been given in default in terms of rule 55(2) of the Magistrate Courts rules and there was nothing in the record on appeal to show that an extension of time within which to have the judgment rescinded had been refused under rule 53(5) It is further held that the judgment is not in fact a final judgment and it is not appeal able under Section 8(3)(2) of the Magistrate Court rule 32 of 1944.

A similar situation obtains in the present case. The judgment or decision of the Industrial Court is a judgment by default having been given in the absence of one of the

parties. There is a remedy available in court in terms of the rules in the court *a quo* and that is to apply for rescission of the judgment. If such application is now out of time it is possible to have the period extended. Until this is done the appeal to this court it is premature and based on a judgment, which is not final. The Appellant's have failed to avail themselves of the remedies provided for in the rules of the court a quo

Accordingly the appeal in this case must be dismissed. We make no order as to costs.

SAPIRE, JP

MATSEBULA, JA

MAPHALALA, JA