



IN THE SUPREME COURT OF ESWATINI
JUDGMENT

Civil Appeal Case No. 53/17

In the matter between:

EKUHLAMKENI FARMERS ASSOCIATION

Appellant

And

SIPHO DLAMINI

Respondent

In re:

EKUHLAMKENI FARMERS ASSOCIATION

Appellant

And

SIPHO DLAMINI

Respondent

Neutral citation: *Ekuhlamkeni Farmers Association and Siphon Dlamini(53/17) [SZSC]*
61 [2019] (28th November, 2019)

Coram: **S.P. DLAMINI JA**
M.J. DLAMINI JA
S.B. MAPHALALA JA
J.M. CURRIE AJA
J.M. MAVUSO AJA

Heard: 25/07/2019

Delivered: 28/11/2019

Summary: *Civil matter – Application for condonation for late filing of Heads of Arguments in terms of Rule 17 of the Court of Appeal Rules – this Court in exercise of its discretion – in the interest of justice - the Court grants the order for condonation – orders that the main matter for review be heard in due course.*

JUDGMENT

S.B. MAPHALALA JA

Application for condonation

[1] For decision by this court presently is an Application for Condonation by the Applicant filed before the Registrar of the this Court on the 27th June, 2019 for an order in the following terms:

1. **Condoning Applicant's failure to file its Heads of Arguments and list of authorities timeously.**
2. **Granting leave to the Applicant to file its Heads of Arguments and list of authorities.**
3. **Further and / or alternative relief.**

[2] The founding affidavit of the Applicant's attorney Mr. Zonke Wilton Magagula is filed in support of the application outlining the salient features therein.

Order of the High Court to stay execution pending appeal

- [3] After the appeal had been filed and pending before this Court, the Respondent sought and obtained an order before the High Court to stay execution pending appeal. It is our view that such an order could only have been sought before this Court as it was now seized with the matter. For convenience sake, at the hearing, the order of the High Court was substituted by an order of this Court to stay execution pending the finalization of the matter.

The opposition

- [4] The Respondent opposes the Application in an Answering Affidavit raising a number of points objecting to the Application for Condonation.

The arguments

- [5] The court heard arguments of the attorneys of the parties on the 25th July, 2019 and reserved its judgment.
- [6] The thrust of the Applicant's arguments is that this is an application in terms of Rule 17 of the Rules of this Court seeking the court's condonation and leave to file Heads of Arguments which have been prepared, and are dated 27th June, 2019. Condonation is sought on the basis that the attorney for the Applicant had been advised by the Assistant Registrar of this Court that she had failed to file the Applicant's Heads of Arguments and Bundles of Authorities within the stipulated time limits as provided for by the Rules of Court, especially Rule 31 of the Rules.
- [7] The Respondent in opposition, on the main, contends at paragraphs 6.1 and 6.2 as follows:

“6.1 *The Applicant’s submission that it was still within time to file on the 27th June 2019 is a serious mistake and unreasonable. Applicant’s computation of days relying on Section 8 of the Interpretation Act of 1970 to include weekends and public holidays when the act does not define days is a serious mistake and unreasonable. Rule 31(1) of the Rules of this Honourable Court provides 28 days for Applicant to file its Head of Argument and Bundles of Authorities before the date of hearing, something which Applicant did not do. Thus, I submit that the Applicant’s application for condonation be dismissed.*

6.2 *I state further that I am being prejudiced by Applicant’s default and mala fide litigation. Applicant have two applications pending before this Honourable Court (i.e., the one bearing court stamp dated 6th November 2018 seeking inter alia “stay of execution of the judgment of the court a quo pending finalization of this matter; that the appeal noted by the Applicant under appeal case no. 53/17 be reinstated; condoning the Applicant’s failure to file Heads of Arguments within the time required by the rules of this Honourable Court”, and the latter application for review bearing court date stamp of 18 January, 2019.”*

[8] We have considered what the attorney for the Applicant had averred in his Founding Affidavit, that he misinterpreted Rule 31 in that he assumed that days meant ordinary days as in the case with Rule 30. Further the rule does provide given an interpretation on days. Therefore on these facts the attorney for the Applicant was negligent.

[9] This Court has found that Applicant’s attorney was negligent in the circumstances but that does not per se disentitle the Applicant from obtaining relief. This Court has considered the circumstances of this case not to lay down that a certain degree of negligence of the attorney will preclude the granting of relief. In this regard I cite

the South African case of **Regal vs Africa Superslate (Pty) Ltd 1962 (3) SA 18 at 23 C:**

"It seems to me that the delay in the present case was due entirely to the neglect of Applicant's attorneys which neglect should not, in my view in the circumstances of this case, debar the Applicant who himself was in no to blame from relief."

[10] Finally in this Court in the case of **Mfanukhona Maduna and Two Others vs Junior Achievement Swaziland Civil Appeal Case No. 105/2017** in an unanimous judgment the Court held that notwithstanding that the application for condonation does not meet the required threshold, the Court, *mero motu* and in the interests of justice, nevertheless, reluctantly granted the condonation application.

[11] We therefore order that in the interests of justice the review application be accordingly heard on the merit.

[12] In the result, for the above mentioned reasons, the Court makes the following order is made;

1. The Applicant is granted leave to file its Heads of Arguments and Bundles of Authorities;
2. The matter is postponed to the next session of this Court for hearing of the review application; and
3. The order of the High Court is to stay execution pending finalization of the matter.


S.B. MAPHALALA JA

I AGREE



S.P. DLAMINI JA

I AGREE



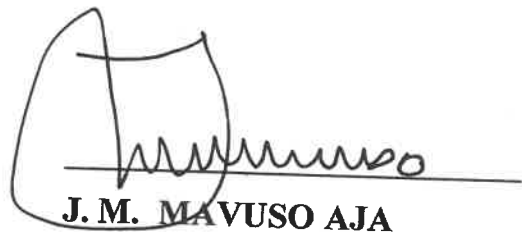
M.J. DLAMINI JA

I AGREE



J.M. CURRIE AJA

I ALSO AGREE



J.M. MAVUSO AJA

For the Applicant:

Mr. Z. Magagula
(Zonke Magagula & CO

For the Respondent:

Mr M.V. Nxumalo
(Lucas BKS Dlamini Attorneys)