IN THE HIGH COURT OF LESOTHO

(LAND COURT)

HELD AT MASERU **CIV/A/30/30**

In the matter between:-

TLALI PHAKISI **APPELLANT**

AND

MOTLATSI CHARLES TLAPANA **RESPONDENT**

JUDGEMENT

Date of hearing : 18 March 2014

Date of judgment : 26 March 2014

SUMMARY

Application for condonation for non-compliance with Rule 52(1) of the High Court Rules 1980 and for revival of the lapsed appeal – Application granted with costs

Appeal from the judgment of the Subordinate Court for the district of Maseru – Ejectment based on rei vindication considered and the principles applicable discussed and applied – Appeal - Site inheritance based on section 7 (7) of Part 1 of Laws of Lerotholi Appeal – Appeal dismissed with costs -Cross-Appeal by Respondent on costs upheld with costs.

ANNOTATIONS

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The High Court Rules 1980

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Hefer v Van Greuning 1979 (4) SA 952

Graham v Ridley 1931 TPP 476; Chetty v Naidoo 1974 (4) SA 13

Gaudinin Chrome (Pty) Ltd v MCC Contracts (Pty) Ltd 1993 (1) SA 77 (A)

Concor Construction (Cape) (Pty) Ltd v Santambank Ltd 1993 (3) SA 930 (A))

Lambinion v Du Toit 1952 (4) SA 431

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Moabi v Mosalalija LAC (1980 -1984) 272

Philip Robinson Motors (pty) Ltd v N M Dada (pty) Ltd 1975 (2) SA 420 (A)

Goudini Chrome (Pty) Ltd v MCC Contracts (PTY) LTD 1993 (1) SA 77 (A)

Vumane v Mkize 1990(1)SA 465

Amalgamated Engineering Union v Minister of Labour 1949 (3) SA 637 (A)

Masopha v'Mota LAC (1985-1989) 58 and Educational Secretary ACL Church Schools v 'Maliteboho Ramokone and Others C of A (CIV) 05/2010

Molejane v Molejane and Others CIV/APN/209/2012;

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MOSITO AJ

INTRODUCTION

1. Respondent as plaintiff in the Court a quo instituted a trial action against Appellant as 1st defendant and one Seabata Tlapana who was joined as 2nd defendant although no relief was sought against him. Respondent obtained an order of ejectment against the Appellant and caused to be issued a warrant in that respect. Appellant has appealed against the whole judgement of the Court a quo on the following grounds:

   (a) That the Respondent did not have rights over the plot in issue because in terms of **Section 7 (7)** of Part 1 of Laws of Lerotholi, Respondent was a **remover**.

   (b) That Respondent was **non-suited** for failure to join SEABATA TLAPANA in the Court a quo albeit he had introduced the said SEABATA as a party having a direct and substantial interest in the suit.

2. Respondent has also filed a cross-appeal against the order made by the Court a quo on the following grounds:

   The leaned Magistrate erred and misdirected himself in failing to award Appellant the costs of suit for which he was entitled as a successful litigant.

   The learned Magistrate erred and misdirected himself in holding that the matter before him was a family matter and therefore making no order as to costs.

3. For reasons that will appear later on in this judgement, the appeal was not set down for hearing in terms of the relevant rules of Court. As a result, the Appellant filed an application on the **10th October 2013** wherein he seeks the following relief:-

   a) An appeal noted on the **6th May 2013** be revived.
   b) Non-compliance with **Rule 52 (1) of the High Court Rules** be condoned.

c) Leave to set down the appeal if prayers (a) – (b) succeed.
d) Costs of suit
e) Further and/or alternative relief.

4. The application is opposed by the Respondent who has not filed an affidavit but has filed a "Notice in terms of Rule 8 (10) (c)" in terms in which he raises the following objections:

a) Rule 52 (1) being clear and peremptory Appellant has failed to make out a case for condonation.
b) Appellant has not deposed to an affidavit explaining his failure to comply with the Rules.

5. It follows therefore that the Respondent has not filed an answering affidavit in opposition to the said application. His case is based exclusively on the notice in terms of Rule 8 (10) (c). The parties have filed extensive heads of argument.

APPLICATION FOR CONDONATION FOR NONCOMPLIANCE WITH RULE 52 OF THE HIGH COURT RULES

6. A preliminary question which must be addressed is whether this Court should deal first with the condonation application or deal first with the Notice in terms of Rule 8 (10) (c).This Rule reads as follows:

"(10) Any person opposing the grant of any order sought in the applicant's notice of motion shall:

a) within the time stated in the said notice, give applicant notice in writing that he intends to oppose the application, and in such notice he must state an address within five kilometres of the office of the Registrar at which he will accept notice and service of all documents.
b) Within fourteen days of notifying the applicant of his intention to oppose the application deliver his answering affidavit (if any), together with any other documents he wishes to include; and

c) if he intends to raise any question of law without any answering affidavit, he shall deliver notice of his intention to do so, within the time aforesaid, setting forth such question."

7. As the Court of Appeal observed in **Molapo v Molefe LAC (2000-2004) 771** at 773-4, it is clear that the Respondent is well within his rights to rely on a point of law without filing any answering affidavit. Having said that, however, the Court of Appeal sounded a word of warning to litigants that, slavish use of Rule 8 (10) without due regard to the circumstances of each case may often lead to unpleasant results. It is however undesirable to lay down any hard and fast rules as each case must be judged on its own particular circumstances. It went on to approve of the remarks of Corbett J (as he then was) in **Bader and Another v Weston and Another 1967 (1) SA 134(C)at 136**:-

" Generally speaking. .... where a Respondent has had adequate time to prepare his affidavits, he should not omit to prepare and file his opposing affidavits and merely take the preliminary objection. The reason for this is fairly obvious, if his objection fails, then the Court is faced with two unsatisfactory alternatives. The first is to hear the case without giving the Respondent an opportunity to file opposing affidavits: this the Court would be most reluctant to do. The second is to grant a postponement to enable the Respondent to prepare and file his affidavits."

8. In the present case, I find myself confronted by these two unsatisfactory alternatives. However, given the attitude of the parties of not having requested for the second route, I proceed to determine the case without giving the Respondent an opportunity to file opposing affidavits on condonation.

9. This part of the case relates to an application for condonation for noncompliance with Rule 52 of the High Court Rules and re-instatement

of the appeal. The appeal is against a judgment of the Subordinate Court Rule 52 of the **High Court Rules 1980** reads:-

> "52. (1) (a) When an appeal has been noted from a judgment or order of a subordinate Court the Appellant may within four weeks after noting of the appeal apply in writing to the Registrar for a date of hearing.
>
> (b) Notice must be given to all other parties interested in the judgment appealed against that such application for a date of hearing has been delivered.
>
> (c) If the Appellant fails to apply for a date of hearing within the four weeks as aforesaid, the Respondent may at any time before the expiration of two months from the date of the noting of appeal set down the appeal for hearing giving notice to the Appellant and all other parties that he has done so.
>
> (d) If neither party applies for a date of hearing as aforesaid the appeal shall be deemed to have lapsed unless the Court on application by the Appellant and on good reasons shown shall otherwise order.
>
> (e) If an appeal lapses but a cross appeal has been noted the cross appeal shall also lapse unless application for a date of hearing is made to the Registrar for a date of hearing of such cross appeal within three weeks of the date of lapse of the appeal. " (My underline)

10. It will be observed that as this appeal had lapsed, in terms of Rule 52(1)(d) the *onus* of reinstating the appeal was on the Appellant. This he could only succeed in doing by showing good cause. Failure to apply for a date in accordance with the provisions of Rule 52 (1) lapses the appeal unless good reasons are shown convincing the Court to reinstate the same; where the appeal has not been prosecuted timeously within the

period and in the manner prescribed under this Rule, the remedy available to the defaulting litigant is to apply for condonation and extension of time for a good cause shown (**Motsamai v Read and Another - 1961 (1) SA 173** - where it was held that where an appeal has lapsed in terms of the Rule for want of prosecution there is "until relief has been granted, no appeal before (this) Court" - see also **De Sousa vs Cappy's stall - 1975 (4) SA 958.**

11. Rule 52 itself gives the Court extensive discretionary powers of condonation. This fact should not be overlooked. Rule 59 of the High Court Rules 1980 further gives this Court residual power to condone breaches of rules in exceptional cases "if it considers it to be in the interests of justice". A very good case must be made. It is not enough to say a practice has grown because of which rules of Court are disregarded. In **Motlalentoa v Monyane 1985 LAC (1985-89) 244** at page 245 Mahomed JA at page 245 observed that the provisions of Rule 52(1) are clear and peremptory.
12. Condonation of non-observance of rules is by no means a mere formality - **Meintjies v HD Combrink (Edms) BPK - 1961 (1) SA 262**. A lengthy delay may be condoned if when weighed against other factors such as a lack of means and "assured" success on appeal explanation for it is satisfactory or forgivable. A long delay will not be condoned if it is clear that the applicant had throughout desired not to prosecute his appeal failure to apply for a date in accordance with the provisions of Rule 52 (1) lapses the appeal unless good reasons are shown convincing the Court to reinstate the same; where the appeal has not been prosecuted timeously within the period and in the manner prescribed under this Rule, the remedy available to the defaulting litigant is to apply for

condonation and extension of time for a good cause shown (**Motsamai v Read and Another - 1961 (1) SA 173** - where it was held that where an appeal has lapsed in terms of the Rule for want of prosecution there is "until relief has been granted, no appeal before (this) Court" - see also **De Sousa vs Cappy's stall - 1975 (4) SA 958**.

13. The first basis on which Respondent in the condonation application opposes the granting of the condonation is that, Rule 52 (1) being clear and peremptory Appellant has failed to make out a case for condonation. The application for condonation is before me. The application is supported by an affidavit by advocate Thulo an officer of this Court. The facts as deposed to in that affidavit remain uncontroverted and paint a picture that the delay in processing the appeal was largely systemic and logistical within the offices of the Court a quo. I accept the explanation as constituting good reasons for non-compliance. In exercising my discretion whether or not to grant condonation, I also bear in mind the importance of this case to the parties. It is a case about ejectment and ownership of residential landed property. The explanation about the delay is largely convincing. The extensive heads of argument prepared by the parties' counsel for this appeal are a clear indication that this appeal may have prospects of success, regard being to the legal issues addressed therein.

14. The second basis on which Respondent in the condonation application opposes the granting of the condonation is that, Appellant has not deposed to an affidavit explaining his failure to comply with the Rules. As I indicated, advocate Thulo has filed such affidavit explaining the situation within the Subordinate Court offices that stifled the speedy processing of the appeal. I consequently find no plausible reason why

the appeal should not be revived and condonation should not be granted.

MERITS OF THE APPEAL

15. I now turn to consider the appeal itself. This is an appeal from the decision of the Subordinate Court for the district of Maseru wherein the present Respondent had sued Appellant for ejectment from certain a plot situate at Mazenod in the Maseru district. At the end of plaintiff's case Appellant applied for absolution from the instance and the Court a quo dismissed that application. Appellant then decided to close his case without giving any evidence in which circumstances he again sought absolution from the instance for the second time after it had been dismissed. I find it a strange procedure that after the application for absolution from the instance had been dismissed, counsel defendant closed his case and sought to apply again for absolution from the instance as it is recorded in this record. I just hope it was a slip of the judicial pen that this has been recorded. This is more so as the issues interrogated at this second stage do not appear to be relevant to an application for absolution from the instance. The parties herein have agreed and impressed on me that heads of argument be filed on the merits in order to have the appeal determined in the event the application for condonation in granted.

16. The crux of Appellant's appeal is firstly that the Court a quo should not have decided in favour of Respondent as he had failed to establish his right and, secondly, that Respondent should have been non-suited for failure to join SEABATA TLAPANA who, although initially joined, the case against him had subsequently been withdrawn notwithstanding his substantial interest in the matter which Respondent was aware of in

initially joining him. As indicated earlier on, Appellant has appealed against the whole judgement of the Court a quo on two grounds: The first is that, That the Respondent did not have rights over the plot in issue because in terms of **Section 7 (7)** of Part 1 of Laws of Lerotholi, Respondent was a **remover**. The second ground is that, Respondent was **non-suited** for failure to join Seabata Tlapana in the Court a quo albeit he had introduced the said Seabata as a party having a direct and substantial interest in the suit.

17. It is a principle of our law that an owner cannot be deprived of his or her property against his will and the normal method of recovering of possession is by an order of ejectment. **Hefer v Van Greuning 1979 (4) SA 952.** That an owner of property is entitled to bring an action for the vindication of his property is clear and requires no detailed consideration. That has been the subject of many decided cases (see for example: **Graham v Ridley 1931 TPP 476; Chetty v Naidoo 1974 (4) SA 13}.**

18. Reverting to the facts of the present case, and by way of a recapitulation, it is not disputed that the plaintiff's cause of action as pleaded was based on vindication that the site in question is owned by plaintiff. Ejectment of an occupier of premises can be obtained by means of: *rei vindicatio* or possessory claim. Since the cause of action is not related to a cancelled contract, reliance must be placed on a superior (usually statutory) right (**See Vumane v Mkize 1990(1)SA 465**). It will be seen that as pleaded, the claim in *casu,* was a vindicatory action – [**it is my site**, you **are in possession**, I ask for restoration]. (See: **Philip Robinson Motors (pty) Ltd v N M Dada (pty) Ltd 1975 (2) SA 420 (A)** at p

423). In **Goudini Chrome (Pty) Ltd v MCC Contracts (PTY) LTD 1993 (1) SA 77 (A) at p. 82,** the Court remarked as follows:

> Since its claim was vindicatory in its nature ownership was an essential averment and had to be adequately proved by it (Ruskin NO v Thiergen 1962 (3) SA 737 (A) at 744A-B). Failure to adduce proper proof would result in the failure of vindicatory proceedings irrespective of a detentor's own entitlement to occupation (Van der Merwe Sakereg 2nd ed at B 348). The best evidence of ownership of immovable property is the title deed to it[or a lease] (R v Nhlanhla 1960 (3) SA 568 (T) at 570D-H; Gemeenskapsontwikkelingsraad v Williams and Others (1) 1977 (2) SA 692 (W) at 696H; Hoffmann and Zeffertt The South African Law of Evidence 4th ed at 391-2). A title deed conforms to the preconditions specified for a public document (cf Hoffmann and Zeffertt (op cit at 150); Schmidt Bewysreg 3rd C ed at 331).

19. As to the burden of proof and related incidents, Jansen JA pointed out in the case of **Chetty v Naidoo 1974 (3) SA 13 (A) at p.** 20 that:

> The incidence of the burden of proof is a matter of substantive law (Tregea and Another v Godart and Another, 1939 AD 16 at p. 32), and in the present type of case it must be governed, primarily, by the legal concept of ownership. It may be difficult to define *dominium* comprehensively (cf. Johannesburg Municipal Council v Rand Townships Registrar and Others, 1910 T.S. 1314 at p. 1319), but there can be little doubt (despite some reservations expressed in Munsamy v Gengemma, 1954 (4) SA 468 (N) at pp. 470H - 471E) that one of its incidents is the right of exclusive possession of the res, with the necessary corollary that the owner may claim his property wherever found, from whomsoever holding it. It is inherent in the nature of ownership that possession of the *res* should normally be with the owner, and it follows that no other person may withhold it from the owner unless he is vested with some right enforceable against the owner (e.g., a right of retention or a contractual right). The

> owner, in instituting a *rei vindicatio*, need, therefore, do no more than allege and prove that he is the owner and that the defendant is holding the res - the onus being on the defendant to allege and establish any right to continue to hold against the owner (cf. Jeena v Minister of Lands, 1955 (2) SA 380 (AD) at pp. 382E, 383). It appears to be immaterial whether, in stating his claim, the owner dubs the defendant's holding "unlawful" or "against his will" or leaves it unqualified (Krugersdorp Town Council v Fortuin, 1965 (2) SA 335 (T)). But if he goes beyond alleging merely his ownership and the defendant being in possession (whether unqualified or described as "unlawful" or "against his will"), other considerations come into play.[Underlinning added for emphasis].

20. The plaintiff had to establish the two requirements for success in an action for *rei vindication(See*: **Lambinion v Du Toit 1952 (4) SA 431**)**.** Further in order to succeed, the plaintiff must not only allege but also prove that he is the owner of the thing **(See: Gaudinin Chrome (Pty) Ltd v MCC Contracts (Pty) Ltd 1993 (1) SA 77 (A) at 82; Concor Construction (Cape) (Pty) Ltd v Santambank Ltd 1993 (3) SA 930 (A)).** In the present case, neither a form C, a title deed, nor a lease issued in terms of the law was tendered in evidence before the Magistrate. From the evidence before the Magistrate, however, it is clear that the present Respondent's case reposed on his being the owner of the site by reason of inheritance of the site not allocation. It is permissible in the law of Lesotho for a person to be an owner of landed properties through inheritance as opposed to allocation.

21. It is now apposite to consider the Appellant's contention that the Respondent did not have rights over the plot in issue because in terms of Section 7 (7) of Part 1 of Laws of Lerotholi, Respondent was a remover This issue was considered by the Court of Appeal in **Moabi v Mosalalija**

LAC (1980 -1984) 272. In that case, the defendant contended that, the plaintiff's father, though in law entitled to inherit the right to use the land, could only do so as long as he or his dependants continued to "dwell" on it and relied in this regard upon Section 7(7) of Part 1 of the Laws of Lerotholi which purports to be a Declaration of Basuto Law and Custom. While holding that it is unwise to approach the interpretation of this part of the Laws of Lerotholi as if it were a statute, the Court of Appeal pointed out that, even if this were done, the phrase "dwell thereon" could not have been intended to bear a narrow meaning. It went on to point out that sub-section (7) deals with land allotted not only for residential purposes but also for growing vegetables or tobacco or planting fruit or other trees. The Court pointed out that, to expect an heir to "dwell" upon in the literal sense of "reside" upon vegetable gardens or orchards in order to retain his right to the inherited land does not seem to be a possible interpretation of the sub-section. The Court pointed out that what was intended was that the heir should not abandon the land but should actively use it. If he does not use it his rights fall away. In my opinion therefore, nothing turns on the contention that the Respondent did not have rights over the plot in issue because in terms of **Section 7 (7) of Part 1 of Laws of Lerotholi**, Respondent was a remover. Once it is accepted as it should that, the site belonged to Respondent’s parents; he is the eldest son (and *in casu*, the only surviving child of his parents), he is in our law entitled to inherit the site all being normal.

22. In the case before me, it is common cause that the land in dispute had originally been allocated to plaintiff’s father. Plaintiff was born at this place. After the death of plaintiff’s mother, the plaintiff and his now

deceased sister were taken by their father to Leribe to be brought up by some relatives. He then raised his house by marrying another woman who begot him the said Seabata Tlapana. In other words, there was only one house which began with plaintiff's mother was raised through the marriage of second defendant's mother after the demise of plaintiff's mother. In our law, plaintiff remained the heir as the eldest son of his father, and allowed his new mother to continue to dwell on the site with second defendant as plaintiff's dependants according to customary law.

23. A related issue is that, it is contended on behalf of the Appellant that the plaintiff was a remover. There was however, no evidence at all that removed .Removal in our customary law is a legal concept consisting in the official migration of a person, from being a subject of one chief to another with the concomitant termination of all bonds of subjectship of the former chief. There was simply no evidence that this is what had happened in the case of the plaintiff. In fact, as the Court of Appeal pointed out in **Moabi v Mosalalija** (supra at 274F-G) in order to raise the matter of law there would have had to be a finding of fact neither the plaintiff's father nor his dependants dwelt upon the land in question. Section 7(7) of Part 1 of the Laws of Lerotholi could then have been invoked. As things stand, however, it cannot. And, as the Court of Appeal correctly warned, the law relating to inheritance and the use and allocation of land is not straightforward and it is important in matters such as these that there should be a full appreciation of the legal issues which were involved and detailed evidence directed to laying a foundation of fact upon which such issues can be decided.

24. In the light of the foregoing discussion of the law, I am of the opinion that there is no substance in the contention that the Respondent did not

have rights over the plot in issue .My view is that he has the right to occupy the plot, which right he inherited from his father in terms of section 7 (7) of Part 1 of Laws of Lerotholi. He has not been proved to have been a remover. This effectively disposes of the first ground of appeal.

25. The second ground is that, the Respondent was non-suited for failure to join Seabata Tlapana in the Court a quo albeit he had introduced the said Seabata as a party having a direct and substantial interest in the suit. In order to succeed on this ground, the Appellant has to establish that the said Seabata Tlapana has a direct and substantial interest in the matter, which is what is required before a plea of non-joinder can be successfully raised: **see Amalgamated Engineering Union** v **Minister of Labour** 1949 (3) SA 637 (A), which has been cited with approval by our Court of Appeal on several occasions: see, e.g. **Masopha** v**'Mota** LAC (1985-1989) 58 and **Educational Secretary ACL Church Schools** v **'Maliteboho Ramokone and Others** C of A (CIV) 05/2010, a decision delivered on 22 October 2010.The issue was not raised in the Court a quo. From the pleadings, it is clear that the said Seabata Tlapana was a defendant from the onset. He was aware of the proceedings for he even filed a plea. He was later withdrawn for reasons not immediately apparent from the record. There was in any event, apparently no effort on his part to try to remain within this legal battle. It is in any event, not clear what interest he could be said to have in this matter. There is in my opinion, no merit in this ground either and it must fail.

THE CROSS-APPEAL

26. Respondent has also filed a cross-appeal against the order made by the Court a quo on two grounds. The first ground is that, the leaned

Magistrate erred and misdirected himself in failing to award Appellant the costs of suit for which he was entitled as a successful litigant. The second ground is that, the learned Magistrate erred and misdirected himself in holding that the matter before him was a family matter and therefore making no order as to costs. These grounds should be treated together as the second ground is but a justification for not granting costs which is the basis of complaint in the cross-appeal.

27. The general principle is that costs follow the event. An award of costs is a matter pre-eminently within the discretion of the Court. Such discretion must however be exercised judiciously and fairly after due consideration of all the relevant factors. It is not an arbitrary discretion nor can it be exercised capriciously or for wrong reasons. The matter, however, does not end there. For the purpose of harmony in the family this Court is generally reluctant to award costs against either party in a family dispute.(See for example: **Molejane v Molejane and Others CIV/APN/209/2012; Ndlebe and Another v Ndlebe and Another CIV/T/256/78; Mahase v Khubeka and Others CIV/APN/217/2002; Chona v Chona CIV/APN/77/82** etc.). As I understand it family disputes include any conflict between people who are related in some way, or who are part of a family or have been part of a family in the past. This can include: within families, such as between couples, parents and children, siblings between families, such as adult siblings and their families, grandparents and their children's families, blended or step-families between separated couples and their families. In such situations, parties should of course make a genuine effort to resolve their disputes by family dispute resolution before applying to the Courts.

28. It is of course clear that the present matter started as a dispute involving two brothers and a stranger. The case was later withdrawn against second defendant thereby leaving the two strangers in combat. One can only speculate that it was so withdrawn either because prevailed between the two brothers to stop fighting so as to preserve family harmony or because it was discovered that Seabata had no direct or substantial interest in the outcome of the matter. This speculation is neither here nor there. The effect of withdrawing the case against the said Seabata was effectively to remove the element of family dispute from this case. I therefore do not believe that the present case can be classified as a family matter regard being had to what transpired.

29. Even if I were in error on the effect of withdrawing the case against the said Seabata from the case, there is no legal principle that where parties to a dispute are family relatives, then the Courts should invariably not award costs as they may deem appropriate. I rather share the sentiments expressed by the Court of Appeal in **'Mamoletsane Moletsane v Fonane Stephen Moletsane C of A (CIV) N0.30/13** that:

> [12] As to costs, the Judge thought that because the matter involved a family dispute no order for costs was warranted. However, counsel for the Respondent sought an order for appeal costs. The Appellant had been given very full and considered reasons why her application failed. Though aggrieved, her chances of a successful appeal ought to have impressed themselves as slim at best yet she went on regardless. I consider that the Respondent should have the appeal costs.
>
> [13] The appeal is dismissed with costs.

30. I am fortified in this approach by the further decisions of the Court of Appeal such as **Mahase v K'hubeka and Another LAC (2005 -2006)426.** I

am therefore of the opinion that the order of the Court a quo was unjustified and that there was proper exercise of discretion in refusing to award costs to the Respondent.

CONCLUSION

31. It is obvious from my reasoning in the course of this judgment that the following order should be and it is hereby made:

a) the appeal noted on the **6th day of May 2013** is hereby revived and non-compliance with **Rule 52 (1) of the High Court Rules** is hereby condoned.

b) The Respondent should bear the costs incurred in opposing the application for condonation and revival of the appeal.

c) The appeal against the judgment of the Subordinate Court is dismissed with costs.

d) The cross-appeal by the Respondent on costs against the judgment of the Subordinate Court is upheld with costs.

e) The costs of the proceedings in the Subordinate Court are to be borne by the Appellant.

DR. K.E.MOSITO

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ACTING JUDGE

For Appellant: Adv P.R Thulo

For Respondent: Adv M.P Tlapana