LAC/CIV/A/05/03

IN THE LABOUR APPEAL COURT OF LESOTHO
HELD AT MASERU

In the matter between

THAKI PHOBA APPELLANT

AND

C.G.M. INDUSTRIAL (PTY) LTD RESPONDENT

CORAM: HONOURABLE MR ACTING JUSTICE K.E. MOSITO
ASSESSORS: MR. MOFELEHETSI
MRS. M. MOSEHLE

DATE Heard on 9 January 2007
Delivered on 12 January 2007

SUMMARY

Appeal – Consideration and application of Rule 13(b) of the Rules of Court - maxim *interest republicae ut sit finis litum considered and applied.*
No appearance for appellant in Court- Appeal dismissed with costs.

REASONS FOR JUDGMENT

MOSITO AJ:

1. This Court dismissed this appeal with costs on 9 January 2007, and promised to furnish reasons later. The following are its reasons.
2. This matter arose out of an originating application in the Labour

Court in which the respondent applied for an order in the following terms:

(a) Setting aside Applicant's dismissal as unfair;

(b) Directing that Applicant be reinstated to his position as Respondent's driver;

ALTERNATIVELY TO (B)

(c) Directing Respondent to pay Applicant his full salary to-date of reinstatement.

(d) Directing that Applicant be paid his full benefits.

3. The application was filed in the Labour court on 20 November 1997. The answer was filed on 12 April 1999, one year and twelve months after the originating application had been filed. The Appellant filed an application for condonation for the late filling of the Answer on the same day. There is no evidence on record that the said application was ever moved or considered by the Labour Court. The answer was filed after several abortive attempts had been made by applicant to have default judgement granted. It is not clear why the Labour Court did not finalise the default judgement application, when it was clear that the respondent had long been served with the originating application. This is more so when regard is had to the fact that the Registrar of the Labour Court had tried even to have Appellant file its Answer by writing several letters to the Appellant, all in vain.
4. The matter was set down for hearing on 20 May1999 but postponed by agreement to 21June 1999. On 21 June1999 it was again postponed *sine die*. It was again set down for hearing on 24 September 1999, but postponed again *sine die*. A fresh date was set for the hearing of the matter on 7 September 2000. On that day, the matter was again

postponed to 16 November 2000. On latter date it is not clear what happened, but the matter was not heard. It was given a fresh date on 12 December 2000 but was on that date again postponed *sine die*. It was then set down on 6 December 2001 and was by agreement of the parties again postponed *sine die*.

5. All these postponements are not explained on record. The matter was ultimately set for hearing on 25 April 2002 whereon it was heard. After that date, one of the assessors, Mr. J.K.Lieta with whom the case had initially started past away. The Labour Court proceeded to dispose of the matter in terms of rule 25(2) of the Rules of Court. It dismissed the application using one assessor on the 6 January 2003.
6. On 10 April 2003,the present appellant, who was applicant in the court *a quo* filed an appeal to this court. No transcript of the record of the Labour Court proceedings was ever filed with the Registrar of this Court. It is at this juncture worth mentioning that on 29 January 2004, the Registrar of this court wrote a letter to the Attorneys of record of the Appellant requesting them to cause the transcript of the record of proceedings to be filed at least a week before the scheduled date of hearing, and that under no circumstances should it be later than Thursday 26 February 2004. She went further to warn that failure to file the record may result in the matter being struck off.
7. That notwithstanding, Appellant failed and/or neglected to filed the transcript. The Registrar reported to this Court that she had issued a notice of hearing of the appeal and contacted Advocate K.K. Mohau, Counsel for the appellant to file the transcript on several occasions all in vain. The matter was placed on the roll, which was issued in December 2006, which reflected that the matter would be heard

during this session of this court. However no transcript has still yet not filed to date

8. When the matter was called before us, there was neither an appearance for the Appellant, nor had there been filed the transcript of the record of the record of proceedings. There was no explanation from anybody as to why the Attorneys for the Appellant did not appear. Appellant himself did not appear. Advocate L. Sephomolo for the respondent urged the court to dismiss this appeal in terms of Rule13 (b) of the Rules of this court.
9. Rule 13 (b) provides that:

> If for no good reasons shown to the Court, the appellant fails to appear in person or through a representative on the date of hearing, the Court may… dismiss the appeal

10. It follows that a litigant under this Rule must provide a satisfactory explanation for not having prosecuted the granting of a final order in his appeal. Other relevant considerations would include the delay in bringing the litigation to an end. Otherwise there might be no end to litigation. To construe the Rule otherwise would be to render virtually redundant the facilities available to interested parties to appeal against the granting of a final order. It would also make a mockery of the principle expressed in the maxim *interest republicae ut sit finis litum.* This is a very important maxim in our law. See for example, **WARD AND ANOTHER v SMIT AND OTHERS: IN RE GURR v ZAMBIA AIRWAYS CORPORATION LTD 1998 (3) SA 175 (SCA)**

11. The Rule has far-reaching consequences. Once a matter has been dismissed in terms of the Rule that is the end of the appeal. In our view the present case is a classic example of a case in which the Rule should be applied. The purpose of the Rule 13 (b) is to *inter alia,* help clear cases of the present nature in which litigants have shown that they no longer have interest in their case.

12. As this Court pointed out in paragraph 15 in **JD TRADING (PTY) LTD t/a SUPREME FURNISHERS v M.MONOKO (cited in his capacity as Commissioner for the Directorate of Dispute Prevention and Resolution) & Ors LAC/REV/39/04:**

> it has come to the attention of this Court that, most of the cases comprising the current backlog of cases in this Court, are frivolous applications for review, filed with the main purpose of frustrating the execution of decisions of the DDPR. Apparently, the current practice is that, once a litigant files an application for review of the DDPR's decision, those charged with the task of enforcing the relevant DDPR's award seem to believe that, the award cannot be enforced for that reason. The result is either that, the cases so filed are not pursued, or languish in the registry for years. This practice is wrong, and must come to an end. It is not only lacking in legal foundation, but it is *a fortiori,* a recipe for injustice, which has the effect of bringing the administration of justice into disrepute.

13. It was also in the spirit of the above consideration and for these reasons that we dismissed this case in terms of Rule 13 (b). In that Rule is enshrined the principle that there should be an end to litigation.

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K.E. MOSITO
JUDGE OF THE LABOUR APPEAL COURT

For Appellant : No Appearance

For Respondent : Advocate Sephomolo