

IN THE LABOUR APPEAL COURT OF LESOTHO

In the matter between:

SOPHIE MOSOANG

APPELLANT

And

**ELLERINES FURNISHERS
(LESOTHO) (PTY) LTD**

RESPONDENT

INTERLOCUTORY ORDER

CORAM : The Hon. Acting Justice KL Moahloli

DELIVERED : 31 August 2015

SUMMARY

Practice and procedure – Appeal to Labour Appeal Court – Rule 7 (1) Rules of Labour Appeal Court 2002 – Failure to deliver record of proceedings within stipulated time-limit – no extension sought pursuant to sub-rule 12 and no application for condonation of non-compliance with Rule 7 – Appellant deemed to have withdrawn appeal – Interpretation and application of sub-rule (14).

Moahloli AJ

Background

- [1] The Appellant Sophie Mosoang, noted an appeal against the whole judgement of the Labour Court (LC/REV/32/2011) on 21 July 2014. The respondent duly entered a notice of appearance to defend on 4th August 2014, accompanied by a special power of attorney to sue and defend in the Labour Appeal Court.
- [2] According to rule 7(1) of the Labour Appeal Court Rules 2002 [“the Rules”] the Appellant was obliged to deliver the record of the proceedings in the court *a quo* within 14 days of the date of the filing of the notice of appeal. Accordingly the record was to be delivered to the office of the Registrar by 11 August 2014.
- [3] Six months later when the matter was called at the roll call on 6 February 2015, respondent’s counsel argued that in terms of rule 7 (14) of the Rules, since the appellant failed to lodge the record in compliance with rule 7 (1) then the appeal is deemed to have been withdrawn. This so because appellant had failed to secure an extension under rule 7 (12). Appellant’s counsel asked to be given an opportunity to justify why the appeal should not be deemed withdrawn. I allowed the parties to file heads of arguments, which they did.
- [4] The Appellant advances several strange grounds why her appeal should not be deemed to have lapsed. Firstly, she argues that “rule 7 (1) should not be interpreted to mean that in every situation where the Appellant has not filed the record within 14 days the appeal shall be deemed to have been

withdrawn”, moreso since the parties are allowed to extend the time – limit by mutual consent [rule 7 (12) (a)]. She says that *in casu* “it only became clear to the Appellant that the Respondents would not agree to an extension in terms of rule 7 (12) (a) on the 6 February 2015 during the [roll call].

[5] I find this argument most disingenuous since the *onus* of seeking Respondent’s consent for an extension lay with the Appellant throughout and she failed to do so before expiry of the 14 day time-limit, right up to the roll call six months later.

[6] Secondly, Appellant contends that she “is still entitled to approach the judge in Chambers for an extension [in terms of rule 17 (12) (b)] and submits” that that can only be done after the record is completed. This is so, she argues, because she will have to allege the reasons for failure to file the record in time therefore the application for extension can only be made after the record has been completed.” This reasoning defies logic. Rule 17 (12) (b) allows an appellant to apply to the judge to extend the 14 day time-limit, by showing good cause why such extension should be granted. I do not see what extension the appellant would be applying for if she waited until the record was ready before she applied. This sub-rule refers to application for extension, not application for condonation of an extension which an appellant has given to himself or herself. So it is not true that the application can only be made after the record has been completed.

[7] The good cause the appellant would have to show for the judge to grant the extension would include any facts or circumstance that would make it just

or equitable as between the parties that the extension should be given.¹ That is to say reasonable and acceptable reasons² why the judge should grant the extension. The relevant facts must be set out clearly and with particularity to enable the judge to exercise his/her wide discretion in terms of the rule on a consideration of the facts of each case.³

[8] Lastly, the Appellant contends that to interpret Rule 7 (14) literally could lead to absurd results. And that the rule itself is not imperative; it allows for generous interpretation. I do not agree. In my opinion, Rules 7 (12) & (13) provide for an uncomplicated and inexpensive way to extend the time for filing the record. The appellant is allowed to approach the opposing side for consent to an extension.⁴ If this fails the appellant may approach the judge, relatively informally in Chambers, for an extension.⁵ If the appellant chooses to totally disregard these Rules she cannot later be heard to say that it is absurd for her appeal to be regarded/considered as withdrawn. Our courts have on numerous occasions bemoaned the pernicious tendency of our practitioners to disregard the rules of the courts. In the last session of the Court of Appeal the President of the Court said that failure to adhere to the rules lowers the high standards of professionalism which must be maintained in the courts. He added that consequently in future a failure comply with the rules, without making a properly motivated application for condonation, will attract a punitive order of costs *de bonis propriis* as a mark of the court's displeasure.⁶ I echo this sentiment *vis-à-vis* this court.

¹ Compare *Dumah v Klerksdorp Town Council*, 1951 (4) SA 522

² Sufficient and satisfactory grounds [*IL & B Marcow Cateres (Pty) Ltd v Greatermans SA Ltd*, 1981 (4) SA 108 (C) at 1124 -113A

³ *Smith N.O. v Brummer N.O.* 1954 (3) SA 352 (0) at 358C; *Nathan (Pty) Ltd v All Metals (Pty) Ltd*, 1961 (1) SA 297 (D)

⁴ Rule 7 (12) (a) of the Rules

⁵ Rule 7 (12) (b) of the Rules

⁶ *Lesotho Mineral Exploration v Standard Lesotho Bank*, [2015] LSCA 10 at para 13-14 (p8-9).

DISPOSITION

[9] In the light of the above, I make the following order:-

1. The Appellant, Sophie Mosoang, is deemed to have withdrawn her appeal.
2. The matter is consequently struck of the roll.
3. No order is made as to costs.

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MOAHLOLI AJ
JUDGE OF THE LABOUR APPEAL COURT

For Appellant : Adv. PA 'Nono

For Respondent : Mr. P. Tšosane