IN THE SUPREME COURT OF SWAZILAND

JUDGMENT

Civil Appeal Case No. 08/2016

In the matter between:

DIRECTOR OF PUBLIC PROSECUTIONS Petitioner

And

MDUDUZI ELLIOT NKAMBULE Respondent

Neutral citation: *Director of Public Prosecutions and Mduduzi Elliot Nkambule (08/2016)* [2017] SZSC 03 *(*11 May 2017*)*

Coram: DR B.J. ODOKI JA, S.P. DLAMINI JA, and R. J. CLOETE JA

Heard: 07 March 2017

Delivered: 11 May 2017

Summary: *Petition for leave to Appeal – Section 6 (1) of the Court of Appeal Act read with Rule 9 (1) of the Court of Appeal Rules, 1971 – Petition for leave to appeal fatally flawed and dismissal thereof on that basis – No order of Costs.*

JUDGMENT

S.P. DLAMINI JA

[1] The issues before this Court are the consideration of the petition seeking leave to appeal the judgment of the *Court a quo* and the consequences of the defects thereto raised by respondent. There have been some murmurs in some quarters that this Court is quick to dispose of matters purely on technical or procedural points and many attorneys who have appeared before this Court have often asked the Court to be lenient when it comes to technical or procedural requirements or dictates of the Rules of Court. The Court will not concern itself with the former because nothing turns on it. However, it is the latter that requires the attention of the Court and it is central to the proceedings before the Court. Similarly, in this matter the Court is faced with a request to ignore defects of the petition.

[2] The spirit and letter of the Constitution of the Kingdom of Swaziland Act 2005 directs this Court (all the courts for that matter) to dispense justice. Section 21(1) of the Constitution is specifically apposite and provides that; *"In the determination of civil rights and obligations or any criminal charge a person shall be given a fair and speedy public hearing within a reasonable time by an independent and impartial court or adjudicating authority established by law*."

I hasten to add that the rules and procedures of Court are part of the tools that assist the Courts and litigants in the pursuit of justice as enjoined by the Supreme Law of the Land.

[3] In this regard, in **Trans – African Insurance Co Ltd v Maluleka 1956 (R) SA** at page 278 Schriener, JA stated the following;

"No doubt parties and their legal advisers should not be encouraged to become slack in the observance of the Rules, which are an important element in the machinery for the administration of justice. <u>But on the other hand technical objections to less than perfect procedural steps should not be permitted, in the absence of prejudice, to interfere with the expeditious and, if</u>

possible, inexpensive decision of cases on their real merits." (my own underlining). With respect, I fully associate myself with the view expressed by the Learned Judge. This view was further adopted and expanded upon with approval by **Herbstein J in Prudential Assurance Co. Ltd v Crombie 1957(4) SA page 702**. The Learned Judge stated that; *"… instead of the required formalism and insistence on technical perfection which appears to have been the approach of some Courts, more attention is being paid to the need to avoid the delay and expense on such formalism and to enable litigants to come to grips with the real issues between them. Where, therefore, there has been a failure to comply with formal legal requirements the Court will, where it has a discretion, be ready to condone any irregularities provided only that this can be done without injustice or prejudice to the other side."* (my own underlining)

[4] The dicta in the cases referred to above is that the Courts should be circumspect and cautious in disposing of matters purely on legal technicalities. But the authorities also go further and provide that the relaxation of the rules is not automatic. The Court must first satisfy itself as to whether it has the necessary discretion to relax a rule in question and that in the event the Court does have discretion, the discretion must be exercised

judiciously, taking into consideration the interests of justice. Furthermore, that each case must be dealt with on the basis of its particular circumstances.

[5] Apart from taking a stand to curtail the rampant discard of the rules, the approach of this Court in my view is not in variance to the dicta supported by these authorities and what obtains in other jurisdictions.

[6] In **Saloojee and Another, NNO v Minister of Community Development 1965 (2) SA** at 5-6, the Honourable Steyn CJ after considering the relaxation of the rules in **R V Chetty, 1943 AD 321 in Regal v African Superslats (Pty) Ltd 1962 (3) SA 18 (AD) 323** came to the following conclusion; "*There is a limit beyond which a litigant cannot escape the results of his attorney's lack of diligence or the insufficiency of the explanation tendered. To hold otherwise might have disastrous effect upon the observance of the rules of this Court."*

[7] This Court in the judgment per the Learned J.H. Steyn JA, in the matter of **Nhlavana Maseko and two others vs George Mbatha and Another Civil Case No 7/2005** at paragraph 5, stated the following;

"[5] Concerning the late filing of heads of argument I regret to record the view of all of us that there has been a serious departure from an observance of the practise directive issued by the Judge President on the 21st April 2005 (see the copy attached).

Practitioners will note the clear warning that non-compliance may be met with appeals being struck off or punitive orders for costs being made. These sanctions may also be invoked where there is late filing of the record, a late filing of a notice of appeal or where there has been non-compliance with Rules and no application for condonation has been made by way of affidavit."
(my own underling)

[8] Regrettably, since the ominous words of His Lordship Steyn in **Nhlavana Maseko and two Others vs George Mbatha and Another** (supra) there has not been any improvement regarding compliance with the Rules. In fact, if what is happening in the current session of this Court regarding the observance of the rules and procedures is anything to go by, the situation has gone from bad to worse. In this regard, the judgment of this Court in **De Barry Anita Belinda and A.G. Thomas Civil Appeal Case No. 30/2015** is apposite. In this case, the Learned Judge R.J Cloete in dealing with the issue

of non-compliance with the Rules at paragraph 6 at pages 26 – 27 of the judgment stated;

"6. The relevant case law relating to the activities referred to in 5 above can be referred to as follows:

6.1 In **Dr Sifiso Barrow v. Dr Priscilla Dlamini and the University of Swaziland (09/2014) [2015] SZSC09 (09/12/2015)** the Court at 16 stated **"It has repeatedly been held by this Court, almost *ad nauseam*, that as soon as a litigant or his Counsel becomes aware that compliance with the Rules will not be possible, it requires to be dealt with forthwith, without any delay."**

6.2 In **Unitrans Swaziland Limited v Inyatsi Construction Limited, Civil Appeal Case 9 of 1996,** the Court held at paragraph 19 that:- **"The Courts have often held that whenever a prospective Appellant realises that he has not complied with a Rule of Court, he should, apart from remedying his fault, immediately, also apply for condonation without delay.** The same Court also referred, with approval, **to Commissioner for Inland Revenue v Burger 1956 (A)** in which **Centlivres CJ** said **at 449-G** that: **"… whenever an Appellant realises that he has not complied with the Rule of Court he should, without delay, apply for condonation."**

6.3 In **Maria Ntombi Simelane and Nompumelelo Prudence Dlamini and Three Others in the Supreme Court Civil Appeal 42/2015**, the Court referred to the dictum in the Supreme Court case of **Johannes Hlatshwayo vs Swaziland Development and Savings Bank Case No. 21/06 at paragraph 7** to the following: **"It required to be stressed that the whole purpose behind Rule 17 of the Rules of this Court on condonation is to enable the Court to gauge such factors as (1) the degree of delay involved in the matter, (2) the adequacy of the reasons given for the delay, (3) the prospects of success on Appeal and (4) the Respondent's interest in the finality of the matter."**

6.4 In the said matter of **Hlatshwayo** referred to above, the Court at 4 stated as follows: **"The Appellant's Heads of Argument were filed on 25 October 2006 which was a period of only six days before the hearing of the matter. This was a flagrant disregard of Rule 31 (1) of the Court of Appeal Rules which provides as follows…** (the wording of the Rule followed)".

6.5 In the same matter, the Court referred to **Simon Musa Matsebula v Swaziland Building Society, Civil Appeal No. 11 of 1998** in which Steyn JA stated the following: **"It is with regret that I record that practitioners in the Kingdom only too frequently flagrantly disregard the Rules. Their failure to comply with the Rules conscientiously has become almost the Rule rather than the exception. They appear to fail to appreciate that the Rules have been deliberately formulated to facilitate the delivery of**

speedy and efficient justice. The disregard of the Rules of Court and of good practice have so often and so clearly been disapproved of by this Court that non-compliance of a serious kind will henceforth procedural orders being made – such as striking matters off the roll – or in appropriate orders for costs, including orders for costs de bonis propriis. As was pointed out in Salojee vs The Minister of Community Development 1965 92) SA 135 at 141, "*there is a limit beyond which a litigant cannot escape the results of his Attorney's lack of diligence*". Accordingly matters may well be struck from the roll where there is a flagrant disregard of the Rules even though this may be due exclusively to the negligence of the legal practitioner concerned. It follows therefore that if clients engage the services of practitioners who fail to observe the required standards associated with the sound practice of the law, they may find themselves non-suited. At the same time the practitioners concerned may be subjected to orders prohibiting them from recovering costs from the clients and having to disburse these themselves."

[9] I have taken the liberty to generously quote the judgment of Justice R.J. Cloete in the case of **De Barry Anita Belinda v A.G. Thomas** (supra) for the following reasons; firstly, the judgment cites with approval various recent authorities dealing with technical or procedure defects by the Courts; secondly, the issues dealt with are relevant to the matter before this Court; and

thirdly, I am in agreement with the approach stated therein regarding non-compliance with the rules that is supported by the judgment.

[10] Coming to the present matter, at the outset the Court records that in applying the above authorities to the pleas for lenience and relaxation of the rules by Petitioner they stand to be rejected and all the procedural challenges to the petition raised by the respondent stand to be upheld as it appears more fully below.

[11] The Respondent herein was indicted and tried for the contravention of Section 27 (1) read with Section 35 (1) of the Prevention of Corruption Act No.3 of 2006 in the c*ourt a quo*. The said indictment essentially was that the respondent acted in a corrupt manner when his wife was promoted by the Teaching Service Commission (TSC).

[12] At the close of the Crown's case, Respondent moved an application to be acquitted in terms of Section 174 (4) of the Criminal Procedure and Evidence Act 1938 (as amended).

[13] His Lordship Mlangeni J acquitted and discharged the Respondent of the offence with which he had been charged. The learned Judge gave his reasons for the judgment. It is not necessary for the purposes of the proceedings before this court to go into the details of the evidence adduced and the arguments before the *court a quo.* The applicant was dissatisfied with the judgment and made the decision to appeal against it.

[14] Prior to the present proceedings, the Crown on the 3rd of July filed a Notice of Appeal against the judgment of the *court a quo* but subsequently withdrew same on the 24th of June 2016. On the very same date, the Petitioner launched the present proceedings. There was no explanation given at all regarding this development.

[15] The Petitioner herein is Mr Nkosinathi Macmillan Maseko, the Director of Public Prosecutions, acting in his capacity representative of the Crown in criminal matters. He deposed to the affidavit upon which the request for the grant of the leave to appeal is based. The respondent, Mr Mduduzi Elliot Nkambule, filed his answering affidavit. The respondent, in his affidavit,

challenged both the procedural and substantive aspects of the Crown's petition. The Crown did not file any replying papers.

[16] When the matter commenced before this Court the issue of the defects of the petition by the Petitioner was canvassed in detail. Counsel for the Petitioner conceded every point made in this regard but requested this Court to be lenient. He implored the Court to overlook the said defects and to grant the Crown leave to appeal because, in his view, it is the interest of justice to do so.

[17] In our law, leave to appeal by the Crown is regulated by Section 6 of the Court of Appeal Act (the Act) read with Rule 9 of the Court of Appeal Rules, 1971 (Rules).

[18] Section 6 (1) of the Act provides as follows;

> *"The Attorney-General or, in the case of a private prosecution, the prosecutor, may appeal to the Court of Appeal, against any judgment of the High Court or made in its criminal origin or appellate jurisdiction, with leave of the Court of Appeal or upon a certificate of the Judge who gave the judgment appealed against, on any ground of appeal which involves a question of law but not a question of fact, nor against severity of sentence";* and

Rule 9 provides as follows;

9 (1) "An application for leave to appeal shall be filed within 6 weeks of the date of judgment which it is sought to appeal against and shall be made by way of petition in criminal matters or motion in civil matters to the Court of Appeal stating shortly the reasons upon which the application is based and where facts are alleged they shall be verified by affidavit."

[19] As already stated, the Petitioner herein sought to obtain leave by way of petition instead of the easier and most expedient procedure of obtaining a certificate from the trial Judge. While a party has an election as to which of the two procedures to adopt, the latter procedure, in the view of this Court, is more appropriate for various reasons. The paramount reason is that in view of the limited bench of the Supreme Court, the same Judges that heard these petitions might not be available to hear the matter if it goes on an appeal or review, as the case may be. This is more so because the Learned Justices, may be conflicted due to having considered the merits of the petition for the leave of appeal. When this Court enquired from Counsel for the Petitioner as to why the Crown elected to embark on this procedure particularly since it appeared that the Crown was not to be familiar with it, Counsel's response was that it was due to the fact they had realised that they were out of time to seek a certificate for leave to appeal from the Learned trial Judge.

[20] As stated above, the Court rejects the pleas by the Petitioner for leniency and relaxation of the rules and procedure however gallant they may be, as it appears more fully below.

[21] This Court is satisfied that in line with the authorities cited above, the procedural defects in the petition by the Crown are fatal. The Court comes to this conclusion not lightly. I have gone through some of the judgments that seem to suggest otherwise. In particular, in **Savannah N. Maziya Sandanezwe vs GD1 concepts and Project Management (Properties) Ltd, Swaziland High Court Case No.905/2009,** the Learned Justice Ota at Pages 7 – 10 says the following;

"*The question that arises at this juncture is, should the court throw this application into the waste bin, like a piece of unwanted meal by reason of this fact, as is urged by the Respondent? I do not think so. I say this because the universal trend is towards substantial justice. Courts across jurisdictions have long departed from the era when justice was readily sacrificed on the altar of technicalities. The rationale behind this trend is that justice can only be done if the substance of a matter is considered. Reliance*

on technicalities tends to render justice grotesque and has the dangerous potentials of occasioning a miscarriage of justice. I have expressed this self same view in several of my decisions. The most recent being the case of ***Phumzile Myeza and others V The Director of Public Prosecutions and another Case No 728/2009, Judgment of the 28th of February 2011 (unreported)***. *In that case, whilst departing from the judicially settled requirement, that for a litigant to be entitled to a declaration that his fundamental right to a fair and speedy hearing within a reasonable time, pursuant to* ***Section 21 (1) of the Constitution of The Kingdom of Swaziland Act, 2005,*** *has been violated, the litigant must demonstrate that he had asserted his right prior to institution of litigation, I had this to say:-*

> *"I must say that I am confounded by the very proposition, that this factor is a precondition to the enforcement of the fundamental right of fair hearing enshrined in the constitution. I am of the firm conviction, that this factor resides more in the realm of forms and formalities, rather than substance, and therefore, should not count greatly in the determination of this matter. I say this irrespective of the reasons advanced by case law in honour of it... I hold the view, that to rely on forms and formalities to hamstrung the very*

constitutional right which ***Section 21 (1)*** *strives to protect, is in itself unconstitutional.*

The universal trend is that courts are interested in substance rather than mere form. This is because the spirit of justice does not reside in forms and formalities, nor in technicalities, nor is the triumph of the administration of justice to be found in successfully picking ones way between the pitfalls of technicalities. Justice can only be done, if the substance of the matter is considered. Reliance on technicalities leads to injustice. The court will therefore not ensure that mere form or fiction of law introduced for the sake of justice should work a wrong, contrary to the real truth or substance of the case before it". *I am delighted to note that I am not alone in the foregoing proposition. The Supreme Court of Swaziland, the apex court in the land, made a similar pronouncement in the celebrated case of* ***Shell Oil Swaziland Ltd V Motor World (Pty) Ltd t/a Sir Motors Case No 23/2006 (unreported) at page 23****. The very illuminating dictum of Tebutt JA, on this question at paragraph 39, to my mind is worthy of restatement. His Lordship declared as follows:-*

"39 The Learned Judge a quo with respect, also appears to have overlooked the current trend in matters of this sort, which is now well recognized and firmly established, viz not to allow technical objections to less than perfect procedural aspects to interfere in the expeditious and if possible, in expensive decisions of cases on their real merits (see e.g. the dicta to that

effect by ***Schreiner JA*** *in* ***TRANS-AFRICAN INSURANCE CO LTD VS MALULEKA 1956 f2) SA 273 (A) AT 278G. FEDERATED TIMBERS LTD V BOTHA 1978 (3) SA 645 (A) AT 645 C-F NELSON MANDELA METROPOLITAN MUNICIPALITY AND OTHERS V GREYVENOUW CC AND OTHERS 2004 (2) SA 81 (SE).*** *In the latter case the court held that (at 95F-96A paragraph 40)*

' The court should eschew technical defects and turn its back on inflexible formalism in order to secure the expeditious decisions of matters on their real merits, so avoiding the incurrence of unnecessary delays and costs'.

40 The above consideration should also be applied in our courts in this Kingdom. This court has observed a tendency among some judges to uphold technical points in limine in order it seems I would dare to add, to avoid having to grapple with the real merits of a matter. It is an approach which this court feels should be strongly discouraged" More to the foregoing, are the words of wisdom *by* ***Van de Heever JA,*** *in the case of* ***Andile Nkosi V The Attorney General, Appeal Case No 51/99 at page 7,*** *where his Lordship declared thus:-*

"Rules governing procedure, such as rules of court, are not made to enable lawyers representing the parties to a dispute without advancing the resolution of the dispute in any way. They are guidelines aimed at

obliging the litigants to define the issues to be determined, within a reasonable time, and enabling the courts, as a consequence, to organize their administration as quickly, effectively and fairly as possible".

[22] Firstly, Rule 9 among other things, requires that **"… the reasons upon which the application is based, and where facts are alleged they shall be verified by affidavit."** In the petition by the Crown no reasons are advanced on which the application is based. In paragraph 2 of his affidavit, Mr Maseko merely repeats the grounds of appeal as contained in the withdrawn notice of appeal. This constitutes a serious flaw in the papers of the Crown.

[23] Secondly, it is trite law that in such matters as is this, the party seeking such an order has to demonstrate that it has prospects of success and that the other party will not suffer any prejudice. In paragraph three of his affidavit Mr Maseko merely states that **"… I believe that there are reasonable prospects that another Court would come conclusions on the questions of law raised by the Crown."** This is nothing more than a unsubstantiated and bold statement. In **Rustenburg Gearbox Centre v Geldmaak Motors CC t/a M E J Motors 2003 (5) SA 468 (T)** the Court held as follows;

"In para 14 at 419 the appellant simply submits that it has good prospects of success on appeal. (See also para 4.2 at p 21 of the notice of motion of 21 February 2003.) That is not sufficient. What is required is that the deponent should set forth briefly and succinctly the essential information that may enable the Court to assess the appellant's prospects of success. A bald submission unsupported by any factual averments is not good enough to discern what the prospects of success are in this matter".

[24] Thirdly, the petition is not in accord with Rule 9 (1) which provides that the Petition shall state shortly the reasons upon which the application is based and where the facts are alleged they shall be verified by affidavit.

[25] Notwithstanding the reference to a Petition, the Crown's papers did not comply with Rule 9. More significantly, the Petitioner did not comply with both form and/or contents of petitions under the law in general. The Crown's papers were more in line with an application as opposed to a petition.

[26] Finally, the Petitioner did not reply to the preliminary points and/or seek to address the legal points in any meaningful way in the Heads of Argument. To the contrary, as already stated, the Crown conceded to all the points from the Bar but implored the Court to overlook them because, according to the Crown, they were purely technical. Furthermore, the Crown implored this Court not to shut the door against its decision to appeal the judgment of the *court a quo* because of technicality and that it was in the interest of justice that it be allowed to appeal.

[27] I wish to say the following regarding the judgment of Justice Ota in the above mentioned case of **Savannah N. Maziya Sandanezwe vs GD1 concepts and Project Management (Properties) Ltd; Swaziland High Court Case No.905/2009**;

(i) The case is distinguishable to the matter before this Court. The matter before court involves not only issues of the rules and procedure but also peremptory provisions. In this regard, I agree with respondents submission on the interpretation of Rule 9 (1) as being peremptory and the authorities

cited in support of this point pertaining the case of **Breedveldt v Van Zyl & Others 1972 (1) SA 303 at 313 E – G wherein Justice Margo J** stated the following:

"It is difficult to escape from the conclusion that the requirement of a petition in section 113 of the Act is peremptory. Apart from the use of the word "shall", the repeated references to the petition… was the same intention, namely that that is the procedure the Legislature intended and no other".

(ii) Justice Ota's judgment does not contain any of the caveats to her approach such as "when possible" or "without injustice or prejudice" or "absence of prejudice" (**Trans-African Insurance Co Ltd v Maluleka and Prudential Assurance Co. Ltd v Crombe Cases above)** that are found in the judgments that are in line with the Learned Judges' approach. However, I do not accept that the judgment can constituted as supporting willy-nilly disregard of the rules and procedures of the Court. If indeed the judgment suggest every defect must be excused, with respect I disagree.

(iii) In the present case, the Crown was warned of the defects through the answering affidavit of the Respondent. The Crown elected not to reply and/or take any corrective measures but simply **"left the matter at the hands of the court"**.

[28] In the case of **Alton Ngcamphalala and three Others Civil Appeal No. 20/2005** this Court was faced with an application for leave to appeal by the Crown. The application was opposed on the basis that it did not comply with the provisions of Rule 9 as the Rules of the Court of Appeal. The relevant paragraph of the judgment is found at page 3;

"The applicant's first complaint is that the Crown's application is not made by way of petition. The Crown in turn avers that the four applicants' application fails to comply with Rule 41 of the Rules of the Court of Appeal which requires that an application to a judge of the Court "shall be by petition" and that their application is brought not by way of petition but by way of notice of motion.

"In its inherent jurisdiction this Court mero motu may excuse any party from

strict compliance with any of its rules if there is no prejudice to any other party, (see ***HERBSTEIN AND VAN WINSEN : The Civil Practice of the Superior Courts in South Africa 3rd Edition*** *page 19-20*). *That is clearly the position here. Each party knows full well what the other party's case is; each came prepared to meet the other's case and even though each one may have not strictly brought its case in the manner prescribed by the rules, this Court will condone that. The matter must be decided on the merits of the matter and the principles applicable to them and not on some inconsequential technical procedural defect."*

[29] Unlike in the present matter, the Court in the **Alton Ngcamphalala and Three Others Case** the Court did not hear full arguments on the issue. However, as reflected in the quotation above. The Court exercised its discretionary powers and *mero mutu* excused the parties from compliance with the rules. Additionally, two factors appear to have influenced that court namely that it appeared that both sides had not complied with the applicable rules and that the Court **"… sits only in every five or six months…"** (paragraph 2 at page 4 of the judgment). The circumstances and factors of that case are not the same with the present matter, in view of the following;

(a) there are many defects in the Crown's papers;

(b) the Crown is the only party that has committed the breaches of the rules;

(c) the defects in the Crown's papers were fully canvassed before this Court; and

(d) finally, we now have a permanent bench of the Supreme Court that sits throughout the year.

[30] This Court does not disagree with judgment and exercise of discretion by the Court in **Alton Ngcamphalala and three Others Case**. However, we note and accept that the circumstances and factors are different between the two cases, hence the difference conclusions.

[31] In conclusion of the several issues traversed above, I wish to repeat what the Honourable Chief Justice of Namibia said in the case of **Ronald Mosemantla Somaeb vs Standard Bank Namibia Ltd Case No. SA 26/2014;**

"[21] It is incumbent on every litigant to comply with rules of court in view of the fact that rules of court serve a specific purpose. In Molebatsi v

Federated Timbers (Pty) Ltd 1996 (3) SA 92 (B) quoted with approval in S v Kakololo 2004 NR 7 (HC) at 10C-E the following was stated (at p 96G-H).

> *'The Rules of Court contain qualities of concrete particularity. They are not of an aleatoric quality. Rules of Court must be observed to facilitate strict compliance with them to ensure the efficient administration of justice for all concerned. Non-compliance with the said Rules would encourage casual, easygoing and slipshod practice, which would reduce the high standard of practice which the courts are entitled to in administering justice. The provisions of the Rules are specific and must be complied with; justice and the practice and administration thereof cannot be allowed to degenerate into disorder.'*

[22] Rules of court cannot be applied selectively in the sense that they are bound to be complied with only by a certain group of persons engaged in litigation in our courts.

[23] In Worku v Equity Aviation Services (Namibia) (Pty) Ltd (In Liquidation) & others 2014 (1) NR 234 (SC) at 240 this court stated the following at para 17:

'It follows from what has just been said that the appellant has not complied with the rules of the court that regulate the prosecution of appeals in material respects. In reaching this conclusion, it has been borne in mind that appellant is a layperson who represents himself before the court. The appellant implored the court to overlook his procedural non-compliance and determine the substantive issues that he asserts underly the appeals, namely, the satisfaction of the judgments of the district labour court mentioned above. However, we cannot overlook the rules which are designed to control the procedures of the court. Although a court should be understanding of the difficulties that lay litigants experience and seek to assist them where possible, a court may not forget that court rules are adopted in order to ensure fair and expeditious resolution of disputes in the interests of all litigants and the administration of justice generally. Accordingly, a court may not condone non-compliance with the rules even by lay litigants where non-compliance with the rules would render the proceedings unfair or unduly prolonged."

[32] Mr B. Simelane, for the respondent, asked this court to award costs in favour of the respondent and relied on Section 7 (3) of the Act. In view of the general inclination of the Courts against awarding costs in Criminal matters and the provisions of Section 28 of the Act, this Court is of the view that it is not appropriate to award costs in this matter. This is more so because there was nothing wrong in decision of the Crown to appeal against the judgment

of the c*ourt a quo* per se but the problem lay in the prosecution of the appeal itself.

Court Order

[33] In view of the aforegoing, the Court makes the following order;

1. that the Petition for the leave to appeal the judgment of the *court a quo* be and is hereby dismissed; and

2. that no order as to costs is made.

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S. P. DLAMINI JA

I agree _____

DR B.J. ODOKI JA

I also agree _____

R. J. CLOETE JA

For the Applicant	**:**	Mr Thabo Dlamini
For the Respondent	**:**	Mr Ben J. Simelane