



**CASE NO.: I 1361/06**

**IN THE HIGH COURT OF NAMIBIA**

In the matter between:

**NATIONWIDE DETECTIVES**

**& PROFESSIONAL PRACTITIONERS CC**

**APPLICANT**

and

**STANDARD BANK OF NAMIBIA LTD**

**RESPONDENT**

**CORAM:** NDAUENDAPO, J.

Heard on: 09 March 2009

Delivered on: 26 October 2010

**JUDGMENT**

**NDAUENDAPO, J.:** [1] The applicant applied to this Court for leave to appeal to the Supreme Court against the judgment of my brother Heathcote AJ (as he then was),

delivered on 10 August 2007.

[2] Background:

The respondent, Standard Bank Namibia, issued summons against the applicant, Nationwide Detectives & Professional Practitioners CC. Applicant opposed the summons, and before the matter could be heard, respondent withdrew the action against applicant, but refused to tender the costs of applicant. In order to recoup its 'costs', the applicant applied to Court in terms of Rule 42(1)(c) for an order for costs. That application was argued before Heathcote AJ. Mr. Alex Kamwi appeared on behalf of the applicant and Mr. Mokhatu, on behalf of the respondent. On 10 August 2007, Heathcote AJ delivered his judgment. In his judgment Heathcote AJ ruled that applicant (being a lay litigant) was only entitled to costs, but limited to actual disbursement reasonably incurred.

[3] Dissatisfied with that judgment, applicant appealed to the Supreme Court. On 24 October 2008, the Supreme Court delivered its judgment and struck the appeal from the roll with costs on the basis that the applicant should have obtained leave from the High Court before it could proceed with the appeal to the Supreme Court.

[4] On 27 October 2008 the applicant filed a notice of application for leave to appeal. In the notice the applicant also prayed that 'the late noting of the leave to appeal be condoned'. The notice was accompanied by an affidavit deposed to by Alex Kamwi. The respondent opposed the application for leave to appeal. When the matter came before me, Mr. Kamwi appeared on behalf of the applicant and Mr. Mokhatu on behalf of the respondent.

[5] Mr. Mokhatu raised two points *in limine*, namely, that the applicant does not have *locus*

*standi* to bring the application and failure to apply for condonation. In my judgment I will first deal with the question of condonation and if I come to the conclusion that a case has been made out, consider whether applicant has *locus standi* to bring the application.

[6] No condonation application:

Mr. Mokhatu submitted that applicant should have filed a substantive condonation application because the judgment against which it seeks to appeal against was delivered on 10 August 2007 and its application for leave to appeal is way out of time. Mr. Kamwi submitted that in terms of Rule 27(3) the Court may on good cause shown (i.e. such as shown by applicant) condone any non compliance of these Rules. It is common cause that the judgment was delivered on 10 August 2007 and the notice of application for leave to appeal was filed on 27 October 2008. In terms of Rule 49(1)(b), such an application for leave to appeal should have been filed within 15 days after the judgment. That rule further states that the 'court may, upon good cause shown, extend the aforementioned period of 15 days'. Mr. Mokhatu correctly submitted that there is no substantive application for condonation. The only reference to 'condonation' is at p5 of Mr. Kamwi's affidavit where he states:

..... "therefore, the appealing to the Supreme Court without leave to appeal may have caused the delay to apply for leave to the High Court and as such the applicant prays for condonation in this regard." In that very same affidavit Mr. Kamwi describes himself as 'a qualified paralegal professional', and legal advisor, 'certification C373 by Oxford Academy, RSA', and he cannot claim that he was not familiar with the Rules of this Court especially Rule 49(1)(b). Rule 49(1)(b) is straight forward and there is nothing complicated in that Rule. Had Mr. Kamwi taken the trouble to acquaint himself with Rule 49(1)(b), he should have known that leave is required. That he did not do and he cannot come to Court and claim ignorance of the Rules of this Court.

[7] As it was stated by the Supreme Court in: **Nationwide Detectives & Professional Practitioners CC v Standard Bank Namibia Ltd 2008(1) NR 290SC at 304:** (Shivute CJ): "it is certainly no answer to this preliminary point for Mr. Kamwi to argue as he has done in oral argument, that the appellant did not know that he should have first obtained leave. As the representative of the appellant, he should have taken the trouble to familiarize himself with the relevant statutory provisions and rules of the Court the appellant chose to litigate in".

[8] *In casu*, the only reason why he did not apply for leave to appeal appears to be the fact that he thought that he could appeal directly to the Supreme Court without first obtaining leave from the High Court. That is no excuse and accordingly the Court cannot accept that as 'good cause'.

[9] In conclusion, the applicant has not made out a case for condonation for the late filing of the application for leave to appeal to the Supreme Court. It is therefore unnecessary to deal with the question whether applicant has *locus standi* to bring the application for leave to appeal.

[10] Accordingly, the following order is made:

The application for leave to appeal to the Supreme Court is struck from the roll with costs.

**NDAUENDAPO, J**

**ON BEHALF OF APPLICANT:**

**Mr. Alex Kamwi**

**Instructed by:**

**ON BEHALF OF RESPONDENTS:**

**Mr. Mokhatu**

**Instructed by:**

**Metcalf legal Practitioners**