

IN THE LESOTHO COURT OF APPEAL

In the Appeal of :

OSCAR MAKAKAMELA LELUMA

Appellant

v

R E X

Respondent

HELD AT MASERU

Coram:

MAISELS P.
VAN WINSEN, J.A.
MARAIS, A.J.A.

J U D G M E N T

Marais, A.J.A.

This is an application for condonation of the applicant's failure to apply timeously for leave to appeal to this Court against his conviction upon a charge of theft, and the sentence imposed upon him, by the Subordinate Court of the District of Leribe, and for leave to appeal.

The appellant appealed to the High Court. His appeal was dismissed by the Chief Justice, and the conviction and sentence were confirmed. A variation was made with reference to the order that the vehicle, which was the subject of the theft charge, be returned to the complainant, but in all other respects, the conviction and sentence was confirmed. Leave to appeal to this Court was refused by the Chief Justice.

The Crown has raised, by way of an objection in limine, the point that no appeal lies to this Court in terms of section 8(1) of the Court of Appeal Act No. 10 of 1978. That section reads :

"Any party to an appeal to the High Court may appeal to the Court against the High Court judgment, with leave of the judge of the High Court, or, when such leave is refused, with the leave of the Court on any ground of appeal which involves a question of law but not on a

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question of fact nor against severity of sentence".

The short point raised by the Crown is that the grounds of appeal upon which appellant wishes to rely in his proposed appeal to this Court, all relate to questions of fact, or to the severity of sentence imposed, and thus, in terms of section 8(1), no further appeal is permissible. It would appear that the construction which the Crown places upon section 8(1) of the Court of Appeal Act is a correct one, and that there is indeed no appeal to this Court on a question of fact, or against severity of sentence, where an appeal has already been heard by the High Court.

It is clear from the grounds of appeal and, indeed, from the heads of argument which have been filed in support of the application for leave to appeal, that the issues which the appellant would canvas in the appeal are all questions of fact. Indeed, Mr. Beckley, who appeared for the applicant, very fairly conceded that he was unable to contend that there was any issue which could qualify as a question of law, and thus render the matter amenable to the jurisdiction of this Court.

In the circumstances, this Court has no jurisdiction to entertain the application and leave to appeal must be refused.

Signed: R.M. Marais
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R.M. MARAIS
Acting Judge of Appeal

I agree Signed: I.A. Maisels
.....
I.A. MAISELS
President

I agree Signed: L.de V. van Winsen
.....
L.de V. Van Winsen
Judge of Appeal

Delivered on this 30th day of June 1981 at MASERU.

For Appellant : Mr. A.P. Beckley
For Respondent: Mr. G.S. Mdhuli