

IN THE LESOTHO COURT OF APPEAL

In the appeal of:

STRONG THABO MAKENETE

APPELLANT

AND

MAJOR-GENERAL JUSTIN METSING LEKHANYA
LESHELE THOHLANE
THE ATTORNEY GENERAL

1ST RESPONDENT
2ND RESPONDENT
3RD RESPONDENT

Held at Maseru

Coram:

Mahomed, P.
Ackermann, J.A.
Molai, A.J.A.

JUDGMENT

Ackermann, J.A.

In this appeal the appellant seeks to have his appeal enrolled and heard notwithstanding his non-compliance with Court of Appeal Rule 3(7).

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On the 6th November, 1990 Cullinan C.J. delivered a written judgment in the High Court dismissing appellant's application. On the 14th December, 1990 appellant filed his notice of appeal against this judgment. In terms of Court of Appeal Rule 3(7) appellant was obliged to file with the Registrar the required copies of the record not later than three months after the filing of his notice of appeal, that is to say not later than 15 March, 1991. This the appellant failed to do and only filed the record on the 3rd June, notice of the present session of this Court having been given to practitioners on the 16th May, 1991.

In order to purge his default as a preliminary step to having the appeal enrolled out of time, it was incumbent on the appellant to apply to this Court for condonation of his failure to file the record timeously. This necessitated a substantive application to this Court by way of notice of motion, supported by affidavits, duly served on the respondents in the appeal.

No such application has been brought. Notwithstanding the fact that appellant's attorney knew on the 16th May, 1991 that this Court would be in session from 16 to 26 July 1991, the last matter properly enrolled to be heard on Tuesday 23 July, he delayed until Friday 19 July 1991 before filing an affidavit, without any accompanying notice of motion and without any prayer for relief.

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Strictly speaking there is no proper application for condonation before the Court and for this reason alone and in the absence of any real urgency or prejudice to the appellant, the application for enrolment merits refusal.

We consider it necessary however to allude to the affidavit filed and the reasons advanced for the failure by appellant's attorney to file the record timeously. One can think of various situations which might give rise to such a failure such as, for example, accident, illness, inability (in trial proceedings) to obtain a transcript of the record or (in motion proceedings) a copy of the judgment, or a *bona fide* oversight by the attorney in question. The reason advanced by appellant's attorney is, however, startlingly novel. He deliberately disregarded the rule in question with full knowledge of its existence. The reason he did so was that he did not know when the next session of the Court of Appeal would be held. This reason was in turn based on an erroneous and unreasonable belief that there were no Appeal Judges to constitute a Court of Appeal. The attitude evinced by the appellant's attorney borders on abandoning his client's appeal. The reasons advanced for his failure hardly bear scrutiny. Perhaps the most distressing omission in the affidavit is the failure by appellant's attorney to tender any apology to the Court.

It has become clear during the present session that many

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practitioners are displaying a lamentably lax attitude to the rules of Court bordering on the contemptuous. The attitude evinced seems to be that the rules are unimportant, can be disregarded at will and that non-compliance will simply be overlooked or condonation granted as a matter of course and right. It is time that practitioners' minds were disabused of this much mistaken impression and the misconceived idea that their disregard of the rules will be overlooked because of the prejudice their clients might suffer. Clients who suffer loss because of omissions on the part of their legal representatives may, in appropriate circumstances, have remedies against ~~these~~^{their} advisers.

We do not, however, wish to close the door finally on the appellant and will accordingly make an order which will enable the applicant, if so advised, to bring a proper application for condonation to this Court at its next session which, if granted, would enable the matter to be heard at such next session.


The application for enrolment is accordingly dismissed.

L.W.H. Ackermann
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L.W.H. ACKERMANN
JUDGE OF APPEAL

I agree

I. Mahomed
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I. MAHOMED
PRESIDENT OF THE COURT OF APPEAL

I agree


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B.K. MOLAI
ACTING JUDGE OF APPEAL

Delivered at Maseru this 23rd day of July, 1991.

For the Appellant : Mr. K. Sello
For the Respondents : Mr. K.R.K. Tampi