

C of A (CRI) 2/91
CRI/A/106/90
CR/104/90

IN THE COURT OF APPEAL OF LESOTHO

Held at Maseru

In the matter between:

MASAMUEL MANTSOE

APPELLANT

AND

REX

RESPONDENT

Coram

Mahomed P.
Ackermann J.A.
Browde J.A.

JUDGMENT

Mahomed P.

The "appellant" was charged in the Subordinate Court in Maseru with the offence of assault with intent to do grievous bodily harm. The Magistrate found the appellant guilty and sentenced her to imprisonment for a period of 5 years which was the minimum sentence which he could impose for such an offence in terms of Order No.10 of 1988.

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The appellant thereafter appealed to the High Court of Lesotho against her conviction and sentence. That appeal was dismissed by Lehohla J. on the 4th of February, 1991.

The appellant thereafter lodged what purported to be a notice of appeal on two grounds. These grounds were that

- "1. The Honourable Judge *a quo* was not correct in coming to the finding that it had been proven beyond all reasonable doubt that the Appellant had the intention to do grievous bodily harm.
- "2. The Honourable Judge, upon the evidence on record, ought to have entertained a reasonable doubt that provocation and injury to herself might have possibly deprived the Appellant of capability to form such specific intention."

The purported notice of appeal is in my view fatally defective for two reasons.

In the first place it was not preceded by any application to the Court *a quo* for leave to appeal. This is clearly necessary, where an unsuccessful appellant to the High Court, seeks to pursue

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a second appeal. Section 8(1) of the Court of Appeal Act makes this perfectly clear. It provides that :-

"Any party to an appeal to the High Court may appeal to the Court against the High Court judgment with the 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 a question of fact nor against severity of sentence."

Secondly, the two grounds of appeal which I have quoted earlier do not even purport to raise a question of law. They involve ordinary questions of fact. What they seek to attack is the conclusions and findings of fact made by the Courts *a quo* on the evidence. This also became apparent from the argument of Mr. Peete for the appellant when he sought to address us on the merits of the appeal.

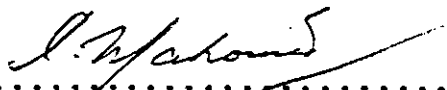
The only conceivable basis on which an attack on the factual conclusions of the Court *a quo* could "involve a question of law", would be if these were conclusions which no reasonable Court could have arrived at. (R v Matsumunyane C of A (CRIM) 16 of 1986; Seholoholo v Rex C of A (CRIM) 2 of 1984). On the evidence there was no basis for such an attack. The appellant had bitten off and completely severed a chunk of the complainant's right ear and had bitten the left hand and a finger of the complainant. A reasonable


Court could clearly infer that these injuries were inflicted with intent to do grievous bodily harm.

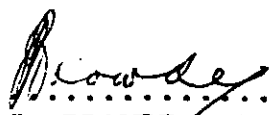
The requirements of Section 8(1) of the Court of Appeal Act have therefore not been fulfilled and there is no proper appeal before us at all, although both Counsel appearing before us had initially prepared their submissions without any reference to the elementary provisions of Section 8(1) as if this was an ordinary appeal on fact from the High Court acting as a Court of first instance.

The matter is struck off the roll.

Dated at Maseru this 26th day of July, 1991.


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I. MAHOMED
PRESIDENT OF THE COURT OF APPEAL

I agree 
L.W.H. ACKERMANN
JUDGE OF APPEAL

I agree 
J. BROWDE
JUDGE OF APPEAL

For Appellant : Mr. S. Peete
For the Respondent : Mr. A. Lenono