

IN THE COURT OF APPEAL OF LESOTHO

In the matter between:-

LIRA MOTLOMELO

Appellant

and

THE MAGISTRATE (MRS SEPHABANE)

1st Respondent

THE DIRECTOR OF PUBLIC PROSECUTION

2nd Respondent

HELD AT MASERU

Coram:-

I. Mohamed, P.

L.W.H. Ackermann, J.A.

J. Browde, J.A.

J U D G M E N T

Ackermann, J.A.

The "appellant" was charged in the Magistrate's Court for the district of Maseru on two counts of theft of motor cars, alternatively of contravention of section 344 (1) of the Criminal Procedure and Evidence Act 1981. Having pleaded guilty to the main charge on count 1 and to the alternative charge on count 2 and these pleas having been accepted by the public prosecutor the

"appellant" was convicted accordingly and sentenced to five years' imprisonment on count 1 and to four years' imprisonment on count 2, it being ordered that the two sentences run concurrently.

Thereafter the "appellant" brought an application in the High Court for an order inter alia directing that the proceedings in the aforementioned criminal case be reviewed and set aside. This application was dismissed by Khecla, J. on the 17th October 1990.

The "appellant" thereafter lodged what purported to be a notice of appeal on the 30th October, 1990 against the dismissal of his review application by Khecla, J.

Section 8 (1) of the Court of Appeal Act 1978 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 on a question of fact nor against severity of sentence."

The relevant portion of Section 8 (2) of the said Act provides that:-

"For the purposes of this section an order made by the High Court in its revisional jurisdiction shall be deemed to be a decision of the High Court in its appellate jurisdiction."

The order made by Khecla, J. in the present matter was such an order by the High Court in its revisional jurisdiction as envisaged by section 8 (2) of the Act.

Accordingly leave of the High Court, or, if such leave was refused, leave of this Court, was an indispensable precondition for noting an appeal to this Court.

It is common cause that no leave to appeal was sought from the High Court against Kheola J's order dismissing appellant's application for review.

There is accordingly no proper appeal before us. (See R.v. Mantsoe C. of A. (CRI) 2 of 1991).

The matter is struck off the roll.

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

L.W.H. Ackermann
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L.W.H. ACKERMANN
Judge of Appeal.

I agree

I. Mahomed
.....

I. MAHOMED
President of the Court of Appeal

I agree

J. Browde

J. BROWDE
Judge of Appeal.