

IN THE COURT OF APPEAL OF LESOTHO

HELD AT MASERU

C OF A (CIV) 64/2014

In the matter between

VIOLET MOUTLE LITŠOANE

APPELLANT

and

‘MAELISA KABELO

RESPONDENT

CORAM: MOKGORO AJA
HLAJOANE JA
MAHASE JA

HEARD: 28 JULY 2015

DELIVERED: 7 AUGUST 2015

SUMMARY

An appeal from the decision of the High Court sitting on appeal against the decision of the Magistrate's Court Mokhotlong – Interpretation of section 17 of the Court of Appeal Act No.10 of 1978.

JUDGMENT

HLAJOANE JA:

- [1] The present appellant obtained from the Magistrate's Court in the Mokhotlong district an ex parte order granting her immediate custody of the minor child named Toka. The rule was confirmed on the return date.
- [2] The matter was later dealt with by the High Court in its appellate jurisdiction setting aside the Magistrate's Court order which had allowed custody of the minor child to the present appellant. The present appellant has now appealed the decision of the High Court dated the 22 September, 2014.

[3] The respondent in her heads of argument did intimate to the appellant that the appeal has been noted to this Court without first seeking the leave of the High Court or by obtaining a certificate from the Judge of the High Court.

[4] The relevant section is section 17 of the Court of Appeal Act 17 of 1978 which provides as follows:

“Any person aggrieved by any judgment of the High Court in its civil appellate jurisdiction may appeal to the Court with the leave of the Court or upon the certificate of the Judge who heard the appeal on any ground of appeal which involves a question of law and not on any question of fact.”

[5] Appellant conceded that she has to withdraw the appeal and tendered costs on an ordinary scale. But respondent’s counsel asked for the striking out of the appeal with costs as between attorney and own client as appellant sat back even after he had been notified in the respondent’s heads which were filed as far back as March 13 this year.

[6] Appellant's counsel submitted that she has failed to ask for any certificate but has not explained why there has been that omission. She has failed to deal with client's case professionally. To show the Court's displeasure the following order is made;

- The appeal is struck off the roll with wasted costs to the respondent on a scale as between attorney and client and such costs to be borne out by counsel herself.

A.M. HLAJOANE
JUSTICE OF APPEAL

I agree:

J.Y. MOKGORO
ACTING JUSTICE OF APPEAL

I agree:

M.M. MAHASE
JUSTICE OF APPEAL

For the Appellant : K.M. Thabane

For the Respondent : Adv. K.K. Mohau KC