

THE COURT OF APPEAL OF LESOTHO
JUDGMENT

C OF A (CIV) 50/2014

In the matter between:

TLALI PHAKISI

Appellant

And

MOTLATSI CHARLES TLAPANA

Respondent

Neutral citation:

Coram: Majara CJ, Musonda and Mahase AJJA

Heard: 20 October 2015

Delivered: 6 November 2015

Summary

Land Court Procedure – Appeal against the refusal by the High Court to issue to the appellant, certificate of appeal – Appellant noting appeal to this Court instead of applying for leave to appeal – Jurisdiction of this Court in such circumstances.

Appeal not being prosecuted because the respondent passed on before the appeal was prosecuted. Application for substitution of respondent filed, not opposed, Appeal accordingly postponed to the next session of this Court in the year 2016.

ORDER

Appeal: The High Court of Lesotho (Mosito J)

Mahase JA (Majara CJ and Musonda (Concurring))

Application granted. There will be no order as to costs

JUDGMENT

MAHASE JA

facts

[1] The trial which resulted in the present appeal emanated from the Maseru Magistrates' Court in CC1322/2010 following appellant's dissatisfaction, he appealed to the High Court.

[2] The appeal was dismissed by his Lordship Mosito A.J. (as he then was), on the 26th March 2014.

[3] Consequently, the appellant lodged a combined application for stay of execution of the Judgment and application for certificate

for leave to appeal in the *Court a quo*. This was also dismissed on the 25th July 2014.

[4] On the 28th July 2014, the appellant noted an appeal to this court against the Judgment of Court in which he was refused an application for leave to appeal. In a nutshell having been refused an application for issuance of a certificate for leave to appeal, the appellant nonetheless noted an appeal directly to this Court.

[5] The issue to be determined by this Court is whether this Court has jurisdiction to entertain the appeal, without first having to decide on the application for leave to issue a certificate that ought to have been lodged.

[6] However, this Court was, on the day of the roll call informed that the respondent has since passed on. This necessitated substitution of respondent by someone else.

[7] To this extend an application for substitution of respondent in the main application was filed and moved before this Court on the 20th October 2015. The application, being unopposed was granted. The obtaining situation is that, now Mr. Motheselane Tlapane (applicant in the application for substitution) has been substituted for the respondent in the main application.

[8] Consequently, and so as to enable the respondent, Mr Motheselane Tlapane to properly and fully brief his counsel to respond to the pleadings, the appeal is postponed to the next session of this Court in the year 2016.

[9] There is no order as to costs because the application for substitution was not opposed.

M Mahase
Justice of Appeal

I agree:

N Majara
Chief Justice

I agree:

Dr. P Musonda
Acting Justice of Appeal

For applicant: Adv M P Tlapana

For respondent: Adv P R Thulo