

IN THE COURT OF APPEAL OF LESOTHO

HELD AT MASERU

C of A (CIV) NO. 55/2014

In the matter between

**THE COMMISSIONER (LESOTHO
REVENUE AUTHORITY)**

APPELLANT

And

**THABANG QATHATSI
RESPONDENT**

1ST

**THE PRESIDENT OF THE REVENUE
APPEALS TRIBUNAL
RESPONDENT**

2ND

CORAM : K.E. MOSITO P.

T. MONAPATHI JA

Y. MOKGORO A.J.A.

HEARD : 28 JULY 2015

DELIVERED : 7 AUGUST 2015

SUMMARY

*Appeal from a decision - Revenue Appeals Tribunal to the High Court, and a further appeal to the Court of Appeal - Section 20 (1) of the **Revenue Appeals Tribunal Act of 2005** providing that, a party to proceedings before the High Court may, with special leave of the High Court, appeal the decision of the High Court to the Court of Appeal – Appeal without special leave in terms of sec 20(1) of the **Revenue Appeals Tribunal Act of 2005** irregular.*

In the absence of compliance with the said section, appeal struck from the roll with costs.

JUDGMENT

MOSITO P

[1] This is an appeal from the judgment of the High Court (**Makara J**). The appellant approached the High Court by way of Notice of Motion for an order reviewing the decision of the Revenue Appeals Tribunal delivered on 25 April, 2013. He asked for the matter to be remitted to the tribunal to be heard *de novo* before different panellists.

[2] As an alternative to remitting the matter for hearing *de novo* and to reconsider its findings of fact and/or consider further findings of fact; particularly the amounts of the deductions which were taken as fringe benefit tax (FBT); the overcharged pay-as-you-earn (P.A.Y.E.) as well as the amount of refunded FBT

refunded as overpaid tax and the amounts due to him. He also sought an order for costs.

In the Notice of Motion initiating the proceedings before the tribunal, the appellant sought an order in the following terms:

- “(a) Two hundred and three thousand, seven hundred and one Maloti and sixty Lisente;*
- (b) Further and or alternative relief;*
- (c) Costs in the event of opposition”*

[3] The claim was in respect of an allegedly overcharged pay-as-you-earn (PAYE) tax, deducted from his salary and never refunded. There was also a request for relief relating to the unlawful deductions which were allegedly made from the appellant's salary and paid to the Lesotho Revenue Authority (LRA) by appellant's former employer as fringe benefit tax.

[4] The application was heard by the tribunal on 8 and 9 October 2012 and judgment was handed down on 25 April 2013. Dissatisfied with the outcome from the tribunal, the appellant instituted review proceedings in the High Court. His review application was largely based on complaints about procedural irregularities as well as improprieties which the tribunal is accused of having committed. There were also other complaints about amounts of tax which the appellant complained ought not to have been allowed by the tribunal. There was a further

complaint that he had not been afforded an opportunity to explain the spread sheet which he had annexed to his affidavit.

[5] The application was heard by **Makara J** on 11 April, 2014 and judgment was handed down on 21 August, 2014. The learned judge granted the applicant's application on the basis of the complaints relating to procedural irregularities. The Court did however, not grant the prayer relating to the actual sums of money because it considered that, the prayer dealt with the merits of the case. The applicant was also awarded costs on party and party basis.

[6] The appellant before us was dissatisfied with the judgment of the High Court and it noted an appeal to this court on the following grounds:

- “1. *The Court below erred and misdirected itself in holding that the Revenue Appeals Tribunal committed a procedural irregularity by admitting Pre-Trial Minutes without the consent of the parties or without them being annexed to an affidavit.*
2. *The Court below erred and misdirected itself in holding that since it was competent for an Appeal to the Revenue Appeals Tribunal to be noted by way of Motion proceedings, the Tribunal committed a reviewable procedural irregularity by admitting the Pre-Trial Minutes without having canvassed the basis of its admission of the Pre-Trial Minutes, or without having condoned the departure from its Rules of the parties use of a Pre-Trial Minute in Motion Proceedings and without further explaining to the parties the procedure it intended adopting and explaining it to them.”*

[7] At the hearing before us, **Mr M. Dichaba** appeared for the appellant and **Advocate Ndebele** for the appellant. There was no appearance for the second respondent.

[8] At the outset, **Mr Dichaba** was asked whether this court has jurisdiction to hear this appeal regard being had to the provisions of sections 20(1) of the **Revenue Appeal Tribunal Act No. 5 of 2005**. That section reads as follows:

“20. (1) *A party to proceedings before the High Court may, with special leave of the High Court, appeal the decision of the High Court to the Court of Appeal.*

(2) A party intending to appeal under subsection (1) shall file a notice of appeal with the Registrar of the Court of Appeal within 60 days of being notified of the decision of the High Court; and the party so appealing shall serve a copy of the notice of appeal on the other party to the proceeding before the High Court.

(3) An appeal to the Court of Appeal may be made on questions of law only, and the notice of appeal shall state the question or questions of law that will be raised on the appeal.

(4) A party entitled to appeal but, without good cause being shown, fails to file notice of appeal within the time allowed by subsection (2), shall be deemed to have abandoned his or her right of appeal against such decision.”

[9] **Mr Dichaba**, the attorney for the appellant, answered the question in the affirmative. He went on to submit that there was no need for special leave of the High Court to be obtained in this case because, the High Court was not exercising an appellate but a review jurisdiction when it adjudicated the matter *in casu*. He then urged the Court to construe section 20(1) of the **Revenue**

Appeal Tribunal Act in such a way as to find that, by using the term "proceedings" in section 20(1), the Parliament intended "appeal proceedings." He submitted further that, if this approach were adopted, it would be found that no special leave of the High Court was a pre-requisite to the appeal being brought to this Court. He also urged the Court to read sections 19 and 20 of the **Revenue Appeal Tribunal Act** together so as to find that, the special leave contemplated by section 20 (1) of the **Revenue Appeal Tribunal Act** did not have application *in casu*.

[10] **Advocate Ndebele** for the respondent disagreed with **Mr Dichaba's** submissions. The learned counsel **Mr Ndebele** argued that section 20(1) of the Act is clear and does not have to be construed in the manner contended for by **Mr Dichaba**. He argued that if the legislature intended the section to require special leave only where the High Court had been exercising appellate jurisdiction, it would have plainly so provided in that section. He therefore urged this Court to give the word "proceedings" its 'plain', or 'ordinary', or literal', or 'grammatical' meaning.

[11] I now turn to evaluate these submissions. Perhaps a convenient starting point should be the remarks of Doyle, C. J. in **Sinkamba v Doyle (1974) Z. R. 1 (C. A.)**, at page 6 that: "...there is little value in debating what is the 'plain', or 'ordinary', or literal', or 'grammatical' meaning of any word or phrase. Dictionary meanings and 'ordinary' meanings are, however, properly used as

working hypotheses, as starting points, although in the final analysis these must always give way to the meaning which the context requires.”

[12] As **Lord Coleridge** stated at page 641 in **R v Peters (1886) 16 QB D. 636**, “I am quite aware that dictionaries are not to be taken as authoritative exponents of the meanings of words used in Acts of Parliament, but it is a well-known rule of courts of law that words should be taken to be used in their ordinary sense, and we are therefore sent for instructions to these books.” As for **Cozen Hardy**, M. R. in **Camden (Marquis) v I. R. C. (A) (1914) 1 KB 641** (at page 647): *“It is for the court to interpret the statute as best it may. In doing so the court may no doubt assist themselves in the discharge of their duty by any literally help they can find, including of course the consultations of the standard authors and reference to well-known and authoritative dictionaries.”*

[13] I am of the view that it matters not whether the “proceedings” before the High Court in respect of which an appeal to this Court has been taken, reached the High Court by way of review or appeal. To my mind, it suffices that the proceedings reached the High Court from the decision of the Revenue Appeals Tribunal. Section 20(1) of the Act does not seem to draw a distinction on whether the proceedings must have been instituted in the High Court by way of review or appeal. It suffices that the proceedings emanated from the tribunal, to the High Court and to this Court.

[14] **Mr. Dichaba** argued before us that only appeals that come to this Court from the High Court exercising its appellate jurisdiction have to be preceded by the special leave of the High Court. I am unable to agree with this submission. This submission does not find support in section 20(1) of the Act. **Mr. Dichaba's** submission that in interpreting section 20(1) of the Act, this Court should have regard to the provisions of section 19 of the Act is equally untenable.

[15] Section 19 deals with appeals from the Revenue Appeals Tribunal to the High Court. In my view, the term 'proceedings' as contemplated by section 20(1) may take the form of either an appeal or review. Nothing therefore turns on whether the proceedings came to the High Court by way of appeal or review for the decision resulting from such proceedings to require special leave if an appeal is to be taken to this Court.

[16] Section 20 of the **Revenue Appeals Tribunal Act of 2005** makes it very clear that a party intending to appeal to this court from a decision of the High Court must first obtain special leave of the High Court in order for the party to proceed to this court. Since a party would generally not be entitled as of right to further appeal to this court from the decision of the High Court adjudicating the matter from the tribunal, then special leave is required in order to appeal to this court. In this case no appeal

can be brought to this Court except with the leave of the Court *a quo*.

[17] It is common ground that the Appellants did not seek leave of the High Court. **Advocate Ndebele** referred to the case of the Supreme Court of Zambia in **Zambia Revenue Authority v T and G Transport SCZ NO. 2 OF 2007**, in which it was held that, according to the English case of **White V Brunton 2 AER [1984] P.606**, the requirement of leave to appeal goes to the jurisdiction of the court of appeal.

[18] In the case before us, counsel acknowledged that there had not been compliance with either section 20(1) of the **Revenue Appeals Tribunal Act 2005**. As indicated above, the appellant has purported to come before this Court on “appeal”. But it is evident from the aforementioned background that, having gone through the High Court in its appellate jurisdiction, this “appeal” is hit by the provisions of sections 20 of the **Revenue Appeals Tribunal Act 2005**.

[19] In the view that I take of this matter as is apparent from the reasons above, this appeal is not properly before us. In the result, the appeal is struck off the roll with costs for want of the special leave from the High Court.

DR K.E.MOSITO

President of the Court of Appeal

I agree

T. MONAPATHI

Justice of Appeal

I agree

Y. MOKGORO AJA

Acting Justice of

Appeal

For Appellant : Mr M. Dichaba

For first respondent : Adv. K. Ndebele