

IN THE COURT OF APPEAL OF LESOTHO

HELD AT MASERU

C of A (CIV) NO. 13/2014

In the matter between

REVEREND DANIEL RANTLE

APPELLANT

and

METHODIST CHURCH OF SOUTHERN

AFRICA (MCSA)

RESPONDENT

CORAM: K.E. MOSITO P.
S.N. PEETE J.A
P.T.DAMASEB A.J.A.

HEARD: 20 JULY 2015

DELIVERED: 7 AUGUST 2015

SUMMARY

Appeal from a judgment of a subordinate court to the High Court, and a further appeal to the Court of Appeal without the necessary leave in terms of sec 17 of the Court of Appeal Act, 1978. Its provisions are mandatory and in the absence of compliance, appeal struck from the roll.

JUDGMENT

MOSITO P

[1] This is an appeal from a judgment of the High Court in its appellate jurisdiction. The matter was initiated in the Subordinate Court for the district of Maseru. The respondent, as plaintiff, claimed an order ejecting the appellant from certain premises in Maseru. The right to such occupation was disputed by the appellant. The matter came before the Learned Magistrate, **Mrs M. Mokuena** who upheld the claim in favour of the respondent, thereby granting an order for ejectment with costs.

[2] The case was next heard on appeal in the High Court. After argument, **Mahase J** made an order dismissing the appeal. The appellant elected to take the matter further on appeal to this Court against the High Court decision and sought to prosecute it. At the hearing before us, **Advocate Shale** appeared for the appellant and **Advocate Loubser** for the respondent.

[3] At the outset, **Advocate Shale** was asked whether this Court has jurisdiction to hear this second appeal having regard to the provisions of *section 17* of the **Court of Appeal Act No, 10 of 1978**. The section reads as follows:

“17. 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 but not on a question of fact.”

[4] This Court has dealt with the effect of this section in such cases as **Mofoka v Lihanela LAC (1985 – 89) 326; Rakometsi v Rakometsi LAC (2005 – 2006) 462; Mohale v Mahao LAC (2005-2006) 101; Mofeli v KaibeLAC (2005-2006)464.** Legal practitioners have therefore sufficiently been warned. It has also been held that the provisions of section 17 of the **Court of Appeal Act No, 10 of 1978** are mandatory.

[5] In the case before us, counsel acknowledged that there had not been compliance with *section 17* of the Court of Appeal Act in that, no leave from this Court had been sought nor had the required certificate been obtained from the High Court.

[6] This case is on all fours with the case of **Rakometsi v Rakometsi LAC (2005 – 2006) 462.** Reverting to section 17 and its concluding reference to “*any ground of appeal which involves a question of law but not on a question of fact*”, it is clear that, leave may be sought only on a question of law (See **Lesotho Union of Bank Employees, in re Moliko v Standard Bank Ltd 1985-89 LAC 86 at 87, Letsoela and Another v Letsoela 1980-84 LAC 275 at 276.**)

[7] In all fairness to him, **Advocate Shale** conceded as much that, a pre-requisite when leave is sought from this Court or from the judge of the High Court is that the question must be one of law. Counsel was then referred to the grounds of appeal as formulated with reference to the appeal from the High Court. He was unable to point to any of the grounds that amounted to a question of law. Should this be the case, it is in itself a reason for not entertaining the appeal (cf. **Leluma v R (1980-1984) LAC 55**).

[8] 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 *section 17* of the **Court of Appeal Act 1978**. In all fairness to Advocate Shale, it must be said that it was obvious that he had not given this question due consideration for he expressly conceded that he was not aware of the procedure referred to above.

[9] I am of the view that, although this Court has a judicial discretion in terms of Rule 15 of the **Court of Appeal Rules 1980** (3) to condone any breach of the Rules in a fitting case, it will only do so for good cause shown on application by notice of motion. In this regard sub-rule 15 (3) provides:-

“(3) *Such application shall be by notice of motion*”

delivered to the respondent and to the Registrar not less than seven days before the date of hearing.”

(Emphasis added.)

[10] In the present case, no application was made moving this Court to exercise its discretion in terms of the above Rule.

[11] This Court has held in the past with reference to Rule 8 (3) of the Court of Appeal Rules 1980(which was in *pari materia* with 15(3) above that, the reason why the Rules of this Court provide for a notice of motion, supported by affidavit, is clearly to enable the Court to gauge such factors as (1) the degree of delay involved before making the application, (2) the adequacy of the reasons given for the delay, (3) the prospects of success on appeal and (4) the respondent’s interest in the finality of the matter (See **Koaho v Solicitor – General 1980 – 1984 LAC 35 at 36-37; Mofeli v Kaibe LAC (2005-2006) 464 para 9**).

[12] In the absence of an application for condonation supported by affidavits, this Court is not in a position to gauge these factors.

[13] In these circumstances, and there being no application for leave to appeal to this Court, the appeal is struck off the roll with costs.

DR K.E.MOSITO

President of the Court of Appeal

I agree

S.N. PEETE

Justice of Appeal

I agree

P.T.DAMASEB

Acting Justice of Appeal

For Appellant : Advocate S Shale

For Respondent : Advocate PJ Loubser