

**IN THE COURT OF APPEAL OF LESOTHO**  
**HELD AT MASERU** **C of A (CRI)**  
**40/2022**

**CRI/T/0190/2017**

In the matter between:-

**SEMPE LEKHINA**  
**SELLO SHAKHANE**  
**APPELLANT**

**FIRST APPELLANT**  
**SECOND**

AND

**DIRECTOR OF PUBLIC PROSECUTIONS**  
**RESPONDENT**

**CORAM:** K. E. MOSITO P  
P MUSONDA AJA  
NT MTSHIYA AJA

**HEARD:** 20 OCTOBER 2022

**DELIVERED:** 11 NOVEMBER 2022

**SUMMARY**

*Criminal Procedure - Application by appellants for ruling overturning a decision by the trial court in undetermined criminal proceedings -exceptional circumstances not present - undesirability of hearing appeals piecemeal.*

**JUDGMENT**

**K. E. MOSITO P**

## **Background**

[1] The appellants had been charged with murder. A trial within a trial was held to enquire into the admissibility of certain written statements made by the first appellant to a magistrate. What seems to have happened *in casu* is that the charge was read to the appellants. They pleaded not guilty. The Crown attempted to submit the confessions. The defence objected based on the inadmissibility of the confessions. A trial within a trial was conducted. At the end of the trial within a trial, the learned Judge ruled that the confessions and that the case should proceed.

[2] The appellants then mounted a constitutional motion against the decision of the Judge to admit the confessions. The learned Judge entertained the application, heard it and dismissed it.

## **Law**

[3] This Court is, in principle, strongly opposed to hearing criminal trials in a piecemeal fashion. However, an exception may be made when unusual circumstances call for such a procedure.

## **Issue for determination**

[3] There can be no doubt that the appellants approached this Court on several grounds of appeal. However, these grounds can be condensed into one issue, *viz*: whether the Court a quo

erred and misdirected itself in entertaining and disposing of the matter in the manner it did.

### **Consideration of the appeal**

[4] The appellants have approached this on appeal complaining the Judge in the Court below erred in entertaining the application. On at least two occasions, this Court has given its approval to the principle that criminal trials should not, as a general rule, be disposed of piecemeal.<sup>1</sup> In the past, this Court has held that:

*"Wahlhaus [Wahlhaus and others v Additional Magistrate Johannesburg and Another 1959 (3) SA113 (A)] and Adams [R v Adams and Others 1959 (3)SA 753 (A)] and numerous subsequent decisions in the South African courts have held that it is not in the interests of justice for an appellate court to exercise any power 'upon the uninterminated course of criminal proceedings' except 'in rare cases where grave injustice might otherwise result or when justice might not by other means be attained' (Wahlhaus). In Adams, the Court of Appeal held that as a matter of policy, the courts have acted upon the general principle that it would be both inconvenient and undesirable to hear appeals piecemeal and have declined to do so except where unusual circumstances called for such a procedure (per Steyn CJ at p 763). The authorities on the point are legion."*<sup>2</sup>

[5] The Court a quo should have struck the constitutional application from the roll, as was done in the Mda and Millennium Travel and Tours cases (supra).

### **Disposition**

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<sup>1</sup> See Millennium Travel and Tours and Others v DPP C of A(CRI) No. 15 of 2006 (as yet unreported) on page 10 (paragraph 12).

<sup>2</sup> Mda and Another v DPP LAC (2000-2004) 950.

[6] The "piecemeal approach" is not to be commended. This is an impermissible approach, moreso in criminal trials. An illustration is afforded by what transpired in **S v G Gqeba and Others**<sup>3</sup>. In that case, after a protracted trial before a Judge and two assessors, in which one of the assessors had been discharged, seven of the 14 accused were convicted of murder and sentenced to death.

[7] They appealed against the convictions and sentences and on a special entry of an irregularity alleged to have stemmed from the discharge of the one assessor during the trial. When the appeal was called, an application was made for the postponement of the appeal on the merits on the ground that the appellants' counsel had not had sufficient time to master the lengthy record. The Court granted the postponement but, in the special circumstances of the case, agreed to hear the appeal on the special entry. On 24 May 1989, the appeal was allowed, and the convictions and sentences were set aside. One can imagine the stress the accused were subjected to in the meantime. There are no exceptional circumstances in this case.

## **Order**

[8] In the result, the appeal is dismissed.



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**K. E. MOSITO**

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<sup>3</sup> S v G Gqeba and Others 1989 (3) SA 712 (A).

**PRESIDENT OF THE COURT OF APPEAL**

I agree:



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**P. MUSONDA**  
**ACTING JUSTICE OF APPEAL**

I agree:



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**NT MTSHIYA**  
**ACTING JUSTICE OF APPEAL**

**For the appellants:** Adv CJ Lephuthing

**For the respondent:** Adv P K Joala (with Adv Tsutsubi).