



LESOTHO

IN THE COURT OF APPEAL OF LESOTHO

HELD IN MASERU

C OF A (CRI) NO.8/2024

In the matter between:

PAKALITHA MAKHELE

1ST APPELLANT

'MAREATLEHILE SEFOLOKO

2ND APPELLANT

AND

**THE QACHA'S NEK MAGISTRATE
COURT MR BALE**

1ST RESPONDENT

**THE CLERK OF COURT QACHA'S
NEK MAGISTRATE COURT**

2ND RESPONDENT

**THE DIRECTOR OF PUBLIC
PROSECUTIONS**

3RD RESPONDENT

CORAM: SAKOANE CJ
DAMASEB AJA
MUSONDA AJA

HEARD: 17 OCTOBER 2024

DELIVERED: 1 NOVEMBER 2024

SUMMARY

Appeal against judgment of High Court in its revisional jurisdiction – Notice of appeal unaccompanied by leave to appeal – such notice non-compliant with Court of Appeal Act, 1978 section 8 and Court of Appeal Rules, 2006 rule 4(3) – Appeal struck of the roll with costs.

JUDGMENT

SAKOANE CJ:

INTRODUCTION

[1] The appellants are before this Court purporting to appeal the judgment of *Khabo J* who dismissed their review application in terms of which they challenged their sentences imposed by the Magistrates Court, Qacha's Nek. They were sentenced following pleas of guilty on two counts of unlawfully and intentionally committing sexual offences on two girl children aged 12 and 14 and offering them money, thereby contravening sections 10(1) and 32 of the **Sexual Offences Act No. 3 of 2003**.

[2] The second sexual act against the 12-year girl was committed in October the same year.

Charges

[3] The 1st appellant was charged in **Count 1** with unlawful sexual offence in relation to girls aged 14 and 12 years in

September 2023. **Count 2** charged him with the same offence committed in October the same year.

- [4] Both pleaded guilty as charged, were convicted and each sentenced to fifteen (15) years imprisonment without a fine in respect of each count. The sentences were to run consecutively, meaning that each will serve a total of thirty (30) years in prison.

Review

- [5] The appellants challenged the sentences by way of review to the High Court for reasons that I need not burden this judgment by repeating them. The review application was dismissed.

Propriety of the Appeal

- [6] On 28 April this year (2024), the appellants filed a Notice of Appeal to this Court seeking to challenge the dismissal of their review application by the High Court. The notice is not accompanied by any leave of the court *a quo* nor any application for leave in this Court.
- [7] When Mr *Habasisa*, for the appellants rose to address the Court, he was pointedly asked whether the notice of the appeal was proper in view of it being a challenge to the exercise of revisional powers by the High Court. He appeared to be surprised by the question and could not answer until

his attention was drawn to section 8 of the **Court of Appeal Act No. 10 of 1978** which reads as follows:

“8. (1) Any party to an appeal to the High Court may appeal to the Court against the High Court judgment with the leave of the judge of the High Court, or, when such leave is refused, with the leave of the Court on any ground of appeal which involves a question of law but not on a question of fact nor against severity of sentence.

(2) For the purposes of this section an order made by the High Court in its revisional jurisdiction, or a decision of the High Court on a case stated, shall be deemed to be a decision of the High Court in its appellate jurisdiction.”

[8] Section 8 should be read together with Rule 4(3) of the **Court of Appeal Rules, 2006** which lays down the following procedure:

“(3) Where a judge of the High Court has given leave to appeal in terms of the Act, the delivery of the certificate of the judge granting such leave together with the grounds of appeal annexed thereto shall be a sufficient notice of appeal and the certificate of the judge of the High Court shall be in accordance with Criminal Form 2 or Civil Form 2 as set out in the First Schedule.”

[9] Section 8 of the Act unambiguously provides that a judgment of the High Court in its revisional jurisdiction (as *in casu*) is only appealable with leave of the High Court or this Court’s leave where the High Court has refused to grant leave. In *Molapo*¹, this Court said:

¹ Molapo v. R LAC (1985-89) 6 @ 8 B-C

“I should add that when leave to appeal is sought from the High Court or in this Court it is salutary practice to define and record the question of law involved. To do so would introduce the discipline of ensuring, as far as that can be done, that s 8(1) is present to the minds of those who want to appeal and those who determine whether they should be given leave to do so.”

[10] The Rule 4(3) has been given clarity (if one is needed) by this Court in a judgment that is handed down in this session in *Mofoka*.² The Court has said that:

“[35] Sub-rule (3) is clear and for good reason: grounds of appeal filed to seek the judge’s certificate are intended to persuade the judge at first instance to grant the certificate on the terms proposed. Once the judge has granted the certificate and narrows the grounds of law (as happened here) those are the grounds that should find their way to this Court and be the basis for the heads of argument to be filed in due course.

...

[37] The appellant is bound by the judge’s certificate. He cannot raise on appeal issues not included in that certificate. More importantly, it is not open to him to challenge findings of fact made by the court *a quo* in its appellate jurisdiction in so far as they have not been certified by the judge *a quo* as matters of law. It is not open to the appellant to attack in this Court the lower courts’ analysis of the evidence. Section 17, it has been held relieves this Court of the burden of deciding factual issues in circumstances where the lower courts have already done so.”

Disposition

[11] The appellants filed the Notice of Appeal absent any leave of *Khabo J.* None was sought from the learned judge. When their counsel was shown this glaring breach of the

² *Mofoka v. Ramohajane and Others* C of A (CIV) 19/2024

provisions of the Act and Rules of Court and the absence of any application to condone the breach, he was unable to provide any answer (let alone a coherent utterance).

Order

[12] The state of affairs is that there is no proper appeal before us.

In the result:

1. The appeal is struck off the roll.



**S. P. SAKOANE
CHIEF JUSTICE**

I agree



**P. T. DAMASEB
ACTING JUSTICE OF APPEAL**

I agree



**P. MUSONDA
ACTING JUSTICE OF APPEAL**

FOR THE APPELLANTS: ADV. T. N. HABASISA

FOR THE RESPONDENTS: ADV. T. LEPHEANA