



LESOTHO

**IN THE APPEAL OF COURT OF LESOTHO HELD AT MASERU
C OF A (CIV) NO.:20/2017
LC/APN/100/2013**

In the matter between:

EXINIA LIPHETHISO THAMAE (aka) MOLOTSI APPELLANT

AND

'MAITUMELENG 'MOLOTSI	1ST RESPONDENT
LAND ADMINISTRATION AUTHORITY	2ND
RESPONDENT MASTER OF THE HIGH COURT	3RD
RESPONDENT ATTORNEY GENERAL	4TH
RESPONDENT	

CORAM: MOSITO P
MUSONDA AJA
CHINHENGO AJA

HEARD: 18 APRIL 2024

DELIVERED: 3 MAY 2024

SUMMARY

Civil Procedure - Court of appeal exercises inherent jurisdiction - striking off an appeal for lack of prosecution - despite the absence of written rule - upholds, integrity of judicial process prevents abuse of court processes - ensures finality of litigation - Appellant failed to file records - prolonged inaction without explanation - Applicant's application granted with costs.

JUDGMENT

MOSITO P

Background

[1] On 18 April 2024 granted the applicant's application for striking of the respondent's appeal for want of prosecution and promised to file our short reasons for the order. The following are the reasons. The applicant approached this Court for an order in the following terms: (a), Striking off the appeal in C of A (CIV) N0.20 of 2017 for lack of prosecution; (b), Costs of the suit in the event of opposition hereof; and (c), Granting Applicant herein such further and/or alternative relief.

[2] The matter commenced in the Land Court (Sakoane J) (as he then was) and judgment was delivered on 14 March 2017. The learned judge delivered his judgment against the first respondent. The said respondent appealed to this Court on 14 April 2017. The notice and grounds of appeal were filed but no record of appeal has been filed until now. As a result, the present applicant (who is the respondent in the appeal, has approached this Court for the prayers as outlined above. When the first respondent noted her appeal on 13 April 2017, she was doing so in terms of rule 4(1) of the Court of Appeal Rules 2006.

The appeal was therefore noted on time.

[3] However, in terms of rule 5 (1) of the rules of this Court, the applicant was required to lodge with the Registrar of this Court seven copies of the record of proceedings not later than three months after the noting of the appeal. She was also required to serve a copy of such record to all the respondents. The appellant has not done so hitherto.

[4] No application for the late filing of a record has been filed in this Court. The appeal has been abandoned as nothing has happened until now.

[5] In terms of rule 7 (1) of the Court of Appeal Rules 2006, it is the responsibility of the appellant or her attorney in a civil

case to prepare the record of proceedings. Failure to file a record of proceedings renders the appeal to be deemed to lapse.

Issue for determination

[6] The issue for determination in this application is whether the appeal in C of A (CIV) No. 20 of 2017 should be struck off for lack of prosecution due to the appellant's failure to file the record of proceedings within the prescribed time limit under the Court of Appeal Rules 2006 of Lesotho and the absence of any reasonable explanation or application for an extension of time.

The law

[7] There is no written rule entitling a party to approach this Court by way of application of the present nature. However, there can be no doubt that this Court is constituted by the Constitution of Lesotho as a superior court of record. It can therefore, exercise its inherent jurisdiction to strike off an appeal for lack of prosecution, even in the absence of a clear written court rule, based on its status as a superior court of record, judicial precedent, consistency with other common law jurisdictions, the need to preserve the integrity of court processes, and the constitutional safeguard of inherent jurisdiction.

[8] In the past, this court has held that "failure to comply with the rules of court regulating the prosecution of appeals is considered a circumvention of the rules of practice which regulate the conduct of litigation. Such non-compliance may warrant the striking out of the appeal for want of prosecution."¹ This principle has been consistently

upheld in subsequent decisions, such as *Mako v Lesotho Telecommunications Corporation and Others*,² where the Court reiterated that "the rules of this court must be complied with, and failure to do so may result in the appeal being struck off the roll."

[9] The inherent jurisdiction of superior courts is recognized as a constitutional safeguard to ensure the effective administration of justice and the maintenance of the rule of law. This inherent jurisdiction allows courts to address gaps or lacunae in procedural rules and to prevent injustice or abuse of the judicial process, even in the absence of explicit statutory or regulatory provisions. The position in Lesotho is consistent with the approach taken in other common law jurisdictions. For instance, in *Thokoana Mosheshoe and Another v Lesotho Electricity Company (Pty) Ltd*³, the

Court of Appeal referred to the decision of the Supreme Court of Appeal of South Africa in *Leibowitz v Ramaphosa*,⁴ which emphasized that "the rules of court are there to be complied with

1 *Noko v Mothobi and Others* [2006] LSCA 12

2 *Mako v Lesotho Telecommunications Corporation and Others* (C of A (CIV) No 4/2018) 12.

3 *Thokoana Mosheshoe and Another v Lesotho Electricity Company (Pty) Ltd* (C of A (CIV) No 27/2017).

4 *Leibowitz v Ramaphosa* (835/2017) [2018] ZASCA 125.

and that a failure to comply with them may result in the striking off of an appeal, particularly where there has been a lengthy delay."

[10] Similarly, in Zambia, the Supreme Court in *Katongo v Mwape*⁴ held that "an appeal may be dismissed for want of prosecution where the appellant has failed to comply with the rules of court relating to

the prosecution of the appeal." The court further stated that "the court has an inherent power to dismiss an appeal in the interest of justice and in the exercise of its control over its own process."⁵

[11] The rationale behind these principles is aptly captured in the Privy Council decision in *Olu Adeniji v Cecilia Ademolu and Others*,⁶ where it was observed that "the courts must be vigilant to see that their processes are not abused and that the interests of justice are preserved. In particular, they must take care to see that dilatory tactics do not enable the party in default to prolong litigation indefinitely and to obtain an unfair advantage over the other party."⁷

Application of the law to the facts

⁴ *Katongo v Mwape* (1985) ZR 36 (SC).

⁵ *Ibid.*

⁶ *Olu Adeniji v Cecilia Ademolu and Others* [1992] 2 ALL ER 587

⁷ *Ibid.*

[12] In the present case, the appellant, Exinia Liphethiso Thamae, failed to comply with Rule 5(1) of the Court of Appeal Rules 2006, which required her to lodge seven copies of the record of proceedings with the Registrar within three months of noting the appeal and serve a copy on all respondents. Despite this non-compliance, the appellant did not make any application for late filing of the record. Furthermore, as per Rule 7(1), it is the appellant's responsibility to prepare the record of proceedings, and failure to file the record renders the appeal deemed to lapse.

[13] Given the appellant's prolonged inaction and failure to prosecute the appeal diligently, coupled with the absence of any reasonable explanation or application for an extension of time, granting the respondent's application to strike off the appeal would be justified in line with the established legal principles outlined above. Striking off the appeal in such circumstances upholds the integrity of the court's processes, ensures finality in litigation, and prevents unnecessary delays and prejudice to the respondents, thereby promoting the efficient administration of justice.

Disposal

[14] In light of the foregoing analysis, it is evident that the appellant has failed to comply with the mandatory procedural requirements under the Court of Appeal Rules 2006 for

prosecuting her appeal. Specifically, she neglected to file the record of proceedings within the prescribed time limit set by Rule 5(1), despite the clear obligation imposed on her as the appellant under Rule 7(1). This dereliction of duty has persisted for an inordinate length of time, without any reasonable justification or attempt to seek condonation from the Court.

[15] Such disregard for the Rules of this Court cannot be condoned, as it undermines the integrity of the judicial process and impedes the efficient administration of justice. The Court must remain vigilant to prevent its processes from being abused and to safeguard the interests of justice for all parties involved. Allowing an appellant to prolong litigation indefinitely through dilatory tactics would grant them an unfair advantage over the respondent and erode public confidence in the judicial system.

[16] Consistent with the established jurisprudence of this Court, as well as persuasive authorities from other common law jurisdictions, the appropriate recourse in such circumstances is to strike off the appeal for want of prosecution. This measure not only upholds the sanctity of the Court's Rules but also ensures finality in litigation, thereby promoting legal certainty and preventing further unnecessary delays and prejudice to the respondents.

[17]In the present case, the appellant's inexcusable non-compliance with the Rules, coupled with her prolonged inaction and failure to provide any reasonable explanation, leaves this Court with no alternative but to strike off the appeal in C of A (CIV) No. 20 of 2017.

The application by the respondent is, therefore, granted with costs. **Order**

[18]It is accordingly ordered that:

The appeal in C of A (CIV) No. 20 of 2017 is struck off for lack of prosecution.



K E MOSITO
PRESIDENT OF THE COURT OF APPEAL

I agree



P MUSONDA ACTING JUSTICE OF APPEAL

I agree



M H CHINHENGO
ACTING JUSTICE OF APPEAL

FOR THE APPELLANT: ADV BMR MASIPHOLE **FOR THE**
RESPONDENTS: NO APPEARANCE