

IN THE HIGH COURT OF LESOTHO

HELD AT MASERU

CRI/REV/0010/2013

In the matter between:-

BOKANG MOLIKO

1ST APPLICANT

MOTHOBI TLAILE

2ND APPLICANT

AND

DIRECTOR OF PUBLIC PROSECUTIONS

RESPONDENT

JUDGMENT

SUMMARY

Applicants have lodged review proceedings against the refusal of the Magistrate to admit the on bail. The Applicants alleging that the Magistrate had in arriving at the decision acted irregularly and maliciously. This Court found that *ex facie* the record of the proceedings there is no foundation for the accusations levelled against the Magistrate and dismissed the application. Thereafter the Applicants brought an appeal before the Court of Appeal before obtaining the Section 8 leave from this Court. The Court inclined to grant the leave on the basis that the Counsel was new in the practice and that it may therefore be harsh upon the poor litigants to be punished due to the inadvertent omission. This notwithstanding, the Court following the footsteps of the Court of Appeal dismissed the application for of leave to appeal

Delivered by the Honourable Mr. Justice E.F.M. Makara

On the 29th March, 2014

[1] This judgement is sequel to the application lodged by the Applicants seeking leave to appeal against the decision of this Court.

[2] A foundation of the review case which the Applicants brought before this Court is that the proceedings and the decision of the learned Magistrate in which he dismissed the Applicants' application for bail be set aside. A Magistrate of the senior powers had presided over the matter.

[3] In a nutshell, the ground for the review was that the Magistrate had **irregularly** and **maliciously** conducted the proceedings and, therefore, wrongly dismissed the Applicant's Bail Application.

[4] The Reviewing Court had in dismissing the application, found that *ex facie* the record of the proceedings before the Court *aquo* the grounds for the redress sought for are foundationless.

[5] In consequence of the dismissal of the review application, the Applicants filed an appeal before the Court of Appeal. He had appealed without having secured leave to appeal from this Court. This is a mandatory procedure under Section 8 (1) of the Court of Appeal Act 10 of 1978 which provides thus:

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 the severity of sentence.

[6] The Applicants paradoxically, subsequently approached this Court for that required leave. A practical indication is that they are asking for a retrospective

correction of his procedural omission to have initially satisfied the requirements of Section 8 (1) of the Act.

[7] Whilst I do not see merits in the appeal, I am inclined to hold that the Applicant could be given the indulgence to explain the special reasons for which he is applying for the dispensation. In the understanding of this Court one such reason could, as the Applicants have averred, be that his Counsel had inadvertently on account of being new in the practice omitted to apply for leave to appeal before filing the appeal with the Court of Appeal. If the Court would be availed an authority to the effect that a party may not be punished because of the patent mistake by the Counsel, that could perhaps, persuade the Court and the Court of Appeal to be considerate.

[8] It is subject to the authorities being available, held that it would rhyme with a good sense of justice if the Applicant is given an opportunity to proceed to the Court of Appeal. This would *inter alia* resonate the Sesotho words of wisdom that “*even an unarticulated person*” or “*a poor man should be afforded a hearing by the Court (Khotla)*”. This is the common sense logic which the Court thinks should be followed. The idea is that at the end, a man must feel that he has been adequately heard and that justice has been done

[9] Pending the availability of the said authority for the Court to fortify its reasoning which was inclined to uphold the application; it transpired that the Court has already pronounced itself on the subject. This was done in the case of **Majake Ramoroke v Director of Public Prosecutions and Another CRI/APN/795/2010; CRI/APN/416/2009 page 5 para 5** that:

What the applicant has done is unprocedural because he has already filed and or noted an appeal before the Court of Appeal before he has been granted leave to do so

by this Court. This is obviously against the numerous decisions of this Court and the Court of Appeal of Lesotho.

[10] The facts in the Ramoroke matter resemble the ones at hand, so there is no way that this Court would find otherwise. The requisite of prior application of leave to appeal does not only apply to criminal cases, but also to civil cases. The Court of Appeal has already ruled in **Makhanya v Pheko and Others C of A (Civ) NO.20/12 page 3 para 7** that it was incompetent for the Appellant to file and serve a notice of appeal without leave of the High Court.

[11] Thus, this Court acting in accordance with the afore cited direction particularly by the Court of Appeal, has no alternative but to follow the latter Court decision.

The application is finally refused.

E.F.M. MAKARA

JUDGE