

SOUTH AFRICA / JUDGMENT

Motaung v Minister of Police (CIP APP RC1/22) [2024] ZANWHC 279 (11 July 2024)

[2024] ZANWHC 279

COURT

North West High Court, Mafikeng

BEFORE

O.Y Dibetso-Bodibe, J.T Djaje

CASE / FILE NUMBER

CIP APP RC1/22

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IN

THE HIGH COURT OF SOUTH AFRICA

NORTH

WEST PROVINCIAL DIVISION, MAHIKENG

Case

No.: CIP APP RC1/22

:

NW/KLD/RC123/20

Reportable:

NO

Circulate

to Judges: NO

Circulate

to Magistrates: NO

Circulate

to Regional Magistrates: NO

In

the matter between:

THAPELO

MOTAUNG

APPELLANT

and

MINISTER

OF POLICE

RESPONDENT

JUDGMENT

DIBETSO-BODIBE AJ

INTRODUCTION

- [1] Compliance with the time limits indicated in the rules of court is mandatory. Any delay places an obligation on the party concerned to seek the indulgence of the court as soon as it becomes aware of the necessity to do so in an application for condonation.
- [2] This is an appeal against the whole judgment and order including the order as to costs granted by the Magistrate's Court held at Klerksdorp on 23 August 2021 whereof, the Appellant's claim for damages incurred as a result of the alleged unlawful arrest and detention by the employees of the Respondent, was dismissed with costs.

PRELIMINARY ISSUES ON NON-COMPLIANCE WITH THE RULES OF COURT

- [3] At the outset the Respondent raised two preliminary issues, firstly, that the Appellant failed to request the written judgment within the prescribed period as provided for under rule 51(1) of the Magistrates' Court Rules ("the MCR") and, secondly, that the Appellant failed to note the appeal in accordance with the time limits prescribed under rule 51(3) of the Uniform Rules of Court ("the URC"). In both instances, the Respondent contended that the Appellant failed to lodge an application for condonation and consequently, that the appeal be dismissed with costs.
- [4] The Appellant did not apply for condonation, nor were the points in limine dealt with in the Appellant's heads of argument. To this end, Counsel for the Appellant requested for the postponement of the matter contending that the Respondent did not take issue with the non-compliance with the rules of court in its first set of heads of argument and that later when it filed the second set wherein the points in limine were addressed, the copy thereof was only served at the correspondent attorney's offices for the Appellant and not made accessible to Counsel.
- [5] In the circumstances, the Court enjoined the Parties to argue both the points in limine and the appeal on merits as against the Appellant's request for postponement of the appeal.

APPLICABLE LEGAL PRINCIPLES

- [6] The procedure of appeal against the judgment delivered in the Magistrate's Court is in principle regulated by two sets of rules, namely, rule 51 of the Magistrates' Court Act 32 of 1944 and Rule 50 of the Uniform Rules of Court. Rule 51 of the MCR regulates the noting of an appeal and rule 50 of the URC regulates the prosecution of an appeal. At issue in this appeal is the non-compliance with rule 51 of the MCR which regulate the noting of the appeal.

[7] Rule 51(1) and (2) of the MCR which deals with the request for written judgment provides that:

[7.1] Within ten (10) days after the judgment has been delivered and before the noting of the appeal, a party may request the clerk of the court, in writing, for a written judgment.

[7.2] Within fifteen (15) days of the aforementioned request, the Magistrate must hand to the clerk of the court a written judgment showing the facts he found to be proved and the reasons for his judgment.

[7.3] On receipt of the written judgment, the clerk of the court must supply a copy of the judgment to the party who requested it and note on the court file the date upon which the judgment is handed over.

[8] In casu, the judgment of the court a quo was granted on 23 August 2021. The Appellant's request for the written reasons was made on 21 September 2021. The Appellant ought to have made such a request within 10 days from the date of judgment which would have lapsed on 6 September 2021. Wherefore, the Appellant's request for reasons was 11 days outside of the prescribed time limits. No condonation application had been brought before the court. In the premises, and in the absence of such an indulgence, the appeal is not properly before the court.

[9] The provisions of rule 51(3) of the MCR deals with the noting of an appeal and provides that an appeal must be noted twenty (20) days after the date of the judgment appealed against or within twenty (20) days after the clerk of the court has supplied a copy of a requested written judgment whichever period is the longer.

[10] In the present matter, the Appellant was provided with the reasons for judgment on 21 September 2021, same day upon which the request was made. Accordingly, the Appellant ought to have noted his appeal on or before 19 October 2021 but did so only on 12 November 2021 some 16 days outside the prescribed time limits.

[11] Notwithstanding the provisions of rule 51 of the MCR, section 84 of the Magistrates' Courts Act 32 of 1944 ("the MCA") affords the High Court, as a court of appeal against orders of the Magistrate's Courts, an unfettered discretion to grant an extension of time for noting or prosecution of an appeal. This section provides that -

"Every party so appealing shall do so within the period and in the manner prescribed by the rules, but the court of appeal may in any case extend such period."

The appeal court, therefore, enjoys inherent jurisdiction to extend the period for noting and/or prosecuting the appeal.

[12] However, this inherent jurisdiction of the appeal court is not to be applied willy-nilly so as to underrate the rules of court whose main objective is to oil the wheels of justice and to expedite the resolution of disputes. As stated in *Louw v Grobler and Another* (307412016) [2016] ZAFSCHC 206 (15 December 2016) at para [18] -

"...The rules set the parameters within which the course of litigation has to proceed. The rules of engagement, must, therefore, be obeyed by litigants."

The rules, therefore, acts as anchors in the tides of injustice, to keep the principles of law afloat. Some explanation from the Appellant and not just adopting a lackadaisical approach must first exist in order to trigger the unfettered discretion of the appeal court. During argument all that Counsel for the Appellant proffered was that the Respondent suffered no prejudice as a result of the Appellant's non-compliance with the rules. The Appellant gave no satisfactory explanation for his failure to observe the Court rules. Request for postponement to address the Respondent's points in limine would not have remedied the procedural non-compliance.

[13] Essentially, once the Appellant filed the notice of appeal outside the prescribed time periods, an application for condonation is required before the court of appeal can deal with the matter on the merits. There is, in the absence of an application for condonation, no appeal for the court to consider. In other words, the appeal is not properly noted as required by rule 51(3) of the MCR and, accordingly not being capable of being prosecuted as required by rule 51(9) of the MCR and rule 50 of the URC.

CONCLUSION

[14] In the premises, the court cannot by operation of law condone a nullity. The Court can only condone an appeal that has been noted late where an application for condonation to that effect has been lodged for consideration. No such application has been brought. In the absence of condonation being granted, the appeal should be struck off the roll for lack of compliance with the applicable rules. The usual cost order that costs follow the result should be made in favour of the Respondent. The scale of the costs to be on a party-and-party basis, to be taxed.

ORDER

[15] In the result the following order is made:

[15.1] The appeal is struck off the roll.

[15.2] The Appellant is ordered to pay the wasted costs on a party-and- party scale.

O.Y DIBETSO-BODIBE

ACTING JUDGE OF THE HIGH COURT

NORTH WEST DIVISION, MAHIKENG

I agree

J.T DJAJE

DEPUTY JUDGE PRESIDENT OF THE HIGH COURT

Delivered: This judgment was prepared and authored by the Judges whose names are reflected and is handed down electronically by circulation to the Parties or their legal representatives by email and by release to SAFLII

APPEARANCES

DATE OF HEARING:

18 August 2023

DATE OF JUDGMENT: 11 JULY 2024

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