



IN THE HIGH COURT OF ESWATINI

HELD AT MBABANE

CASE NO. 22/2018

In the matter between: -

**AFRICAN ECHO (PTY) LTD
LUCKY TSABETSE
ANDILE NSIBANDZE
SIKELELA MAMBA**

1st Applicant
2nd Applicant
3rd Applicant
4th Applicant

And

LUCKY BOY MTHETHWA

Respondent

In re:

LUCKY BOY MTHETHWA

Plaintiff

And

**AFRICAN ECHO (PTY) LTD
LUCKY TSABETSE
ANDILE NSIBANDZE
SIKELELA MAMBA**

1st Defendant
2nd Defendant
3rd Defendant
4th Defendant

Neutral citation:

*African Echo (Pty) Ltd & 3 others vs Lucky Boy
Mthethwa 22/2018) SZHC 48 (20 March 2024)*

CORAM:

N.M. MASEKO J.

**FOR APPLICANTS/DEFENDANTS:
FOR RESPONDENTS/PLAINTIFF:**

**ATTORNEY S. DLAMINI
ATTORNEY M.V. NXUMALO**

DATE HEARD:

30/11/2022

DATE OF EX TEMPORE JUDGMENT:

30/11/2022

DATE DELIVERED:

20/03/2024

PREAMBLE:

Civil Procedure – Civil Appeals from the High Court to the Supreme Court are governed by Section 14 and Rules 8 and 9 of the Court of Appeal Act (AND RULES) No. 74 of 1954.

JUDGMENT

(Application for leave to appeal to the Supreme Court)

MASEKO J

- [1] On the 16th September 2022, I delivered a full and final written judgment on liability in the defamation trial *in casu*. I then postponed the issue of quantum of damages pending negotiations between the parties, failing which the matter was then to be set down to proceed to the next stage for determination of the aforesaid damages. It appears that the applicants/defendants have appealed or intends to appeal the judgment on liability before the second stage of the determination of quantum of damages is dealt with. I have no problem with that and in fact, they are at liberty to do so, however, in accordance with the Supreme Court Act and Rules.
- [2] It appears from correspondence attached in these proceedings for leave to appeal that the negotiations did not bear any fruit.
- [3] On the 17th October 2022 the Applicants/Defendants launched an application for leave to appeal the judgment of this Court delivered on the 16th September 2022. There is also a prayer to stay the aforesaid judgment.

[4] The Applicant's News Editor states that they engaged the Respondent/Plaintiff with a view to negotiate and settle the matter, however, the negotiations were not fruitful. The Applicant states further that, the fact that they engaged in negotiations should not be construed as acquiescence to the judgment by the Applicants/Defendants, but that they are desirous to appeal the judgment delivered by this Court on the 16th September 2022.

[5] The application for leave to appeal is opposed by the Plaintiff/Respondent who has raised two points *in limine*, to wit:-

(i) This Court has no jurisdiction to grant such an order because the judgment handed down by this Court on the 16th September 2022 is a final judgment on liability of the Applicants/Defendants to the Respondent/Plaintiff in the main defamation suit. Therefore if the Defendants/Applicants were dissatisfied with the judgment they have every right of appeal to the Supreme Court.

(ii) The relief sought in prayer two (2) of the Notice of Motion is incompetent because it seeks to contradict or vary the final judgment of this Court, which is not allowed because it has since become *functus officio*.

THE LAW GOVERNING CIVIL APPEALS FROM THIS COURT TO THE SUPREME COURT

[6] Section 14 of the Court of Appeal Act No. 74/1954 provides as follows:-
14. (1) An appeal shall lie to the Court of Appeal-
(a) from all final judgments of the High Court; and

[9] If the Applicants/Defendants desire(d) to appeal the full judgment on liability they should have done so within four (4) weeks from the 16th September 2022. This is in terms of Section 14 (1) (a) of the Court of Appeal Act 74/1954 read together with Rule 8 (1) and (2).

[8] Rule 9 of the Court of Appeal Rules provide as follows:-
 9. (1) An application for leave to appeal shall be filed within six weeks of the date of the judgment which it is sought to appeal against and shall be by way of petition in criminal matters or motion in civil matters to the Court of Appeal stating shortly the reasons upon which the application is based, and where facts are alleged they shall be verified by affidavit.

[7] 8 (1) The Notice of Appeal shall be filed within four weeks of the date of judgment against appealed against:
 "Provided that if there is a written judgment such period shall run from the date of delivery of such written judgment: ----"
 (2) The Registrar shall not file any Notice of Appeal which is presented after the expiry of the period referred to in paragraph (1) unless leave to appeal out of time has previously been obtained.

[7] The judgment handed down by this Court on the 16th September 2022 is a final and full written judgment on the issue of liability. If the Applicants/Defendants desired to appeal this judgment they ought to have filed the Notice of Appeal within four (4) weeks from the date of judgment in terms of Rule 8 (1) of the Court of Appeal Rules of 1971 which provide as follows:-

(2) The rights of appeal given by subsection (1) shall apply only to judgments given in the exercise of the original jurisdiction of the High Court.
 (b) by leave of the Court of Appeal from an interlocutory order, an order made *ex parte* or an order as to costs only.

[12] Not only is this Court *functus officio* in this matter, but the Court of Appeal Act and Rules do not make provision for this Court to grant any party leave to appeal to the Supreme Court in a judgment which it issued or handed down in its original jurisdiction. This is the position as regards civil matters. All applications for leave to appeal judgments of this Court in both civil and criminal matters fall within the exclusive domain of the Supreme Court and not this Court. Equally a Notice of Appeal is to be filed with the Registrar of the Supreme Court within four (4) weeks from the date of judgment it is sought to appeal. This notice is

[11] This Court does not feature in any of these Sections and Rules of the Court of Appeal. Once this Court issues a final judgment it becomes *functus officio* and does not have jurisdiction to interfere in any appeal processes before the Supreme Court. This Court can only deal with the matter if it has been remitted back to it in accordance with the specific instructions of the Supreme Court. The Applicants/Defendants filed or launched the proceedings *in casu* on the 17th October 2022 before this Court for leave to appeal and stay the judgment of this Court delivered on the 16th September 2022. There is no High Court rule which permit or empowers this Court to grant leave to appeal to the Supreme Court in civil matters.

[10] If the Applicants/Defendants were of the view that **this is an interlocutory judgment, which is not**, they were at liberty to invoke Section 14 (1) (b) of the Court of Appeal Act read together with Rule 9 (1) of the Court of Appeal Rules by seeking for leave of Supreme Court within six (6) weeks from the date of judgment which it is sought to appeal against.

proceedings (leave to appeal).

2. The Applicants/Defendants are to pay costs of these

terms of Court of Appeal Act and Rules.

full judgment on liability straight to the Supreme Court in

and the Applicants/Defendants were at liberty to appeal the

application for leave to appeal, this Court is *functus officio*

1. Having heard Counsel on both sides, I hereby dismiss the

the 30th November 2022:-

[15] It is on those basis that I handed down the following *ex tempore* order on

which I hereby provide.

written reasons were requested by the Applicants/Defendants, and

Court of Appeal Rules. It was only on the 26th February 2024 that the

before the Supreme Court in terms of the Court of Appeal Act and the

to determine this matter and that they ought to have filed their appeal

Applicants/Defendants Mr S. Diamini that this Court has no jurisdiction

[14] During arguments in this matter I duly explained to Counsel for the

Rule 8(2).

of time must be filed with the Registrar of the Supreme Court in terms of

regard. In fact even an application for condonation for leave to appeal out

is sought to appeal. This court has no role to play whatsoever in this

the Supreme Court within six (6) weeks from the date of the judgment it

[13] And an application for leave to appeal is to be filed with the Registrar of

heard by the Appellate Division.

jurisdiction whatsoever to deal with appellate processes for matters to be

not filed with the Registrar of this Court because this Court has no

JUDGE
N.M. MASEKO

So ordered.