

IN THE COURT OF APPEAL OF SWAZILAND

Criminal Appeal Case No.33/02

In the matter between:

MAXWELL M. NDWANDWE Applicant

VS

REX Respondent

CORAM : BROWDE J.A.

BECK J.A.

ZIETSMAN J.A.

For the Applicant : In person

For the Respondent : Ms M.S. Langwenya

JUDGMENT

15th November 2002

Beck J.A.

The applicant addressed the following letter to the Registrar of the High Court on 12th September 2002:

"Be pleased to take notice that the above named applicant was tried and convicted by Magistrate Sabelo Mngometulu at Mbabane Magistrate Court on the 15th February 1998 for the offence of Robbery and sentenced to 7 years imprisonment.

However I made an appeal to the High Court of Swaziland appealing against

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conviction and sentence and it was rejected and dismissed. I then asked the High Court to give me another chance to write an appeal to the Court of Appeal. I then write to the Court of Appeal.

The Court of Appeal called me on the 6th December to hear my appeal. Unfortunately there was no certificate for leave to Appeal. The Court of Appeal said they cannot hear my appeal because of the certificate for leave to appeal. I now humbly request the High Court of Swaziland to allow me to lodge an appeal to the Court of Appeal.

I hope my request will be heard through your kindness my Lord.

Yours faithfully,

Maxwell Mbongeni Ndwandwe."

From the final sentence in the penultimate paragraph of his letter it is apparent that he was seeking the leave of the High Court to appeal to this Court against the judgment of the High Court which, as his letter states, dismissed his appeal against his conviction and sentence in the Magistrates Court on a charge of robbery.

Without referring his application to the High Court the Registrar has enrolled it for hearing by this Court.

This is the second time that this matter has irregularly found its way to this Court. On the strength of a similar letter dated 30th July 2001 that the applicant addressed to the Registrar of the High Court the matter was enrolled for hearing, not in the High Court, but in this Court, and on 6th December 2001, it came before Browde J.A., Steyn J.A. and me. Despite the fact that the application had not been brought before the High Court, we nevertheless treated it as an application for leave to appeal and we gave full consideration to the merits of the proposed appeal. We refused to grant leave to appeal because we held that there was no substance in any of the grounds of appeal against either the conviction or the sentence. Steyn J.A. delivered the judgment with which Browde J.A. and I concurred.

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The applicant appears to be under the impression that he was refused leave to appeal only because he had not first sought leave from the High Court to do so. That is not the case. As I have said, this Court gave full consideration to the evidence that resulted in his conviction, and also to the appropriateness of the sentence that was imposed on him, and we were satisfied that he was correctly convicted and sentenced. A copy of the judgment that Steyn J.A. delivered is to be given to the applicant, together with a copy of this judgment, and his attention is directed to that portion of the judgment of Steyn J.A. that commences at line 7 on page 3 and concludes at the foot of page 4 with the words:

"For these reasons leave to Appeal is refused and the appeal is struck from the roll."

The attention of the Registrar is directed to this judgment and, once again, to the judgment that was delivered in December 2001, when this matter was first enrolled before this Court, wherein the Registrar was directed as to how a proposed appeal to this Court from a decision of the High Court dismissing an appeal from a lower court is to be dealt with.

The application is struck from the roll.

BECK J.A.

I agree

BROWDE J.A.

I agree

ZIETSMAN J.A.