

IN THE COURT OF APPEAL OF BOTSWANA

Appeal No. 27 of 1988

In the matter between:

JOE BANTI PELOEWETSE

Appellant

versus

THE STATE

Mr. S. T. Pilane for the Appellant  
Mr. Balule for the State

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J U D G M E N T

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CORAM:

Amissah, JP  
Aguda, JA  
Doyle, JA

AGUDA, JA

This case has come before us on a Notice of Appeal filed by Counsel ~~on~~ behalf of the appellant. In the ~~Notice~~ Counsel says it is "an appeal against the refusal for an application for bail by the Court sitting at Lobatse on the 19th day of October 1988, and a refusal to hear the renewed application on Thursday the 24th November 1988 by the same Court".

On October 20, (not October 19) 1988, the appellant was represented by Mr. Acheampong in an application brought before the Chief Justice under a certificate of urgency for the appellant to be released on bail. He is charged

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with murder which he is alleged to have committed on October 5, 1988. After hearing Mr. Acheampong for the appellant and Mrs. Dambe for the State, the learned Chief Justice said:

"I have given careful consideration to the facts advanced by the applicant in his affidavit in support of his application. I regret to say that I can find no special circumstances for granting bail to the Applicant having regard to the seriousness of the offence charged. I therefore refuse the application".

Just about a month thereafter on November 24, 1988, the appellant through another Counsel, this time Mr. Pilane, brought another application for bail before another Judge, Barrington-Jones J, again under a certificate of urgency. No affidavit was filed in support, and therefore no fresh allegations of fact on oath were brought to the attention of Barrington-Jones, J. The learned judge rightly struck out the application. Nevertheless Barrington-Jones, J. went on rightly, to point out as follows:

"But whilst on the subject of bail application generally, I believe it may be of assistance to Attorneys to take this opportunity to make it clear that at least, in so far as this Court is concerned, all such applications must be supported by an affidavit setting out the full grounds of the application. And that where a bail application is an urgent one, the Attorney concerned must ensure that copies of the application and affidavit are lodged with the Attorney-General before any application is made to the Registrar for a date of hearing before a judge"

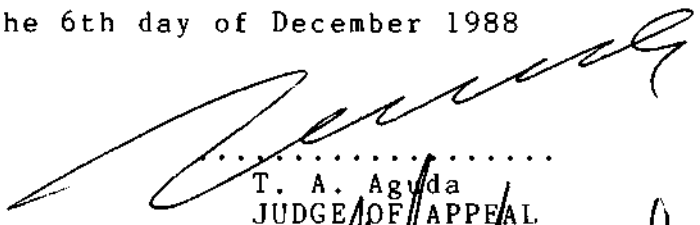
The appeal now before us is stated by Mr. Pilane to be an appeal against the Rulings of both the Chief Justice and Barrington-Jones, J. In my view it is completely misconceived. Mr. Pilane has submitted before us that we have jurisdiction to hear this appeal by virtue of the Court of Appeal Act (Cap 04:01), Section 10 which gives an aggrieved person the right to appeal to this court in respect of final decisions of the High Court. We disagreed with him. He was also unable to find solace in Section 11 which makes provision for appeals by leave from interlocutory orders of the High Court. Mr. Pilane rightly conceded that a refusal of an application for bail might not be held to be an interlocutory order under the provision of the Section. And in any case even if it were held to be such an order, it was incumbent on the appellant to have first ~~sought~~ leave of the High Court which has not been done in this case.

Mr. Pilane informed us that in coming before us he relied on the case of Michael Mzwinila v The State, Appeal No. 1 of 1986. In that case it was assumed that appeal lay to this Court from the refusal of bail by the High Court, and the Judgment proceeded on that basis. Now that we have given careful

consideration to the point whether or not appeal lies to this Court from a refusal of the High Court to admit an accused person to bail, we have come to the conclusion that such an appeal does not lie.

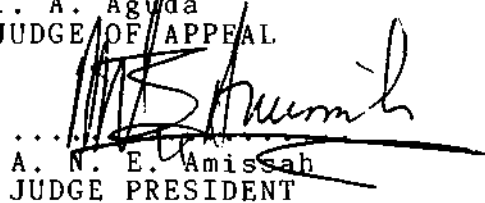
The Criminal Procedure and Evidence Act (Cap 08:02), Section 13, gives the High Court power to admit an accused to bail at any stage of the proceedings. No such power is given to this Court. However if after conviction an accused files an appeal and the appeal is pending before this Court, then he may be admitted to bail by a single judge of the High Court or of this Court, by virtue of the Court of Appeal Act (Cap 04:01), section 14. No court has an inherent jurisdiction to take appeals from judgments and orders of a lower court. Such jurisdiction can only be conferred by statute, but none has been conferred on this Court in this case. Appeal is incompetent and must be dismissed and is hereby dismissed.

GIVEN at Lobatse on the 6th day of December 1988



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T. A. Aguda  
JUDGE OF APPEAL

I agree:



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A. N. E. Amisshah  
JUDGE PRESIDENT

I agree:



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B. A. Doyle  
JUDGE OF APPEAL