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IN THE COURT OF APPEAL OF BOTSWANA
HELD AT LOBATSE

Criminal Appeal No. 13 of 1990
High Court Crim. Appeal No. 24 of 1990

In the matter between:

LINCO MOTLHONO

vs

THE STATE

Appellant in Person
Mr. M. E. C. Mhango for the State

J U D G M E N T

Coram: T. A. AGUDA, JA.
G. BIZOS, JA.
W. H. R. SCHREINER, JA.

AGUDA, JA.

The Appellant was charge with the offence of rape, tried and convicted on January 30th 1990. He thereafter wrote an application for an appeal against conviction and sentence which appears to have been dated on the 20th February, 1990. We note however the figure "8" has been superimposed upon the figure "0". It is not quite clear to us when this was done, and by whom.

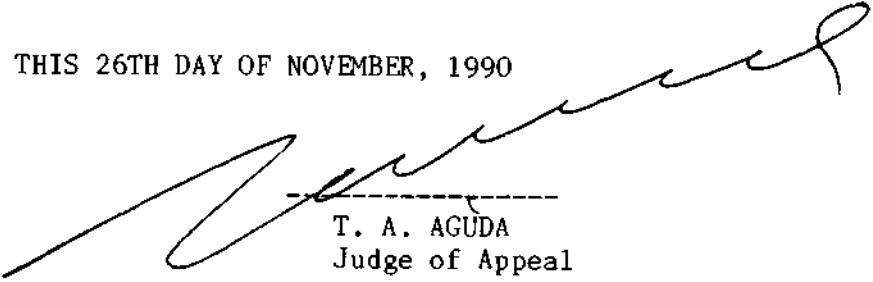
The application came before the Chief Justice sometime in August 1990. The Learned Chief Justice struck out the application for leave to appeal onthe ground that it had been noted out of time. The Applicant admitted before us that he was

informed of his right to file the appeal within 14 days of conviction. He told us that he went to the Prison Authorities for the purposes of noting the appeal some days before the letter dated 20th February was typed. It is not clear to us on what date he in fact approached the Prison Authorities therefore we find it difficult to know whether or not he was much in default. It is however quite clear that the appeal got to the High Court late. In all the circumstances we feel that this matter should go back to the Learned Chief Justice to investigate into the question of when the appeal was in fact noted. As the appellant is an illiterate, the trial Chief Justice should take his notice as leave, and consider it on its merits.

There is however, another matter, PW3 told the Court at the Magistrate's Court that the Applicant made a statement to a Judicial Officer. The Applicant himself admitted that before us, and it appears on page 15 of the record that the statement was tendered in evidence and marked Exhibit B. Our investigations show that possibly the statement was not sent to the High Court.

We feel very strongly that the document marked Exhibit B should be sent to this Court. The case should come before this Court again on Thursday 29th November, 1990.

GIVEN AT LOBATSE THIS 26TH DAY OF NOVEMBER, 1990



T. A. AGUDA
Judge of Appeal

I agree:

G. Bizos
G. BIZOS
Judge of Appeal

I agree:

W. H. R. Schreiner
W. H. R. SCHREINER
Judge of Appeal