



THE COURT OF APPEAL OF LESOTHO

HELD IN MASERU

C OF A (CIV) 57/2015

CIV/APN/329/2013

In the matter between:

**THE COMMISSONER (LESOTHO
REVENUE AUTHORITY)**

1ST APPELLANT

THE LESOTHO REVENUE AUTHORITY

2ND APPELLANT

And

THABANG QATHATSI

1ST RESPONDENT

**THE PRESIDENT OF THE REVENUE
APPEALS TRIBUNAL**

2ND RESPONDENT

CORAM: CLEAVER AJA,
MUSONDA AJA
MOLETE AJA

HEARD : 22 April 2016

DELIVERED : 29 April 2016

SUMMARY

Application of Revenue Appeals Tribunal Rules 2007 – Appeal to Tribunal to be prosecuted under rules in Part III – Tribunal entitled to accept minutes of a pre-trial conference.

JUDGMENT

CLEAVER AJA

- [1] This appeal is part of a tax dispute between the Appellants and the First Respondent which commenced with an appeal by the First Respondent to the Revenue Appeals Tribunal (“The Tribunal”) against tax levied against him.
- [2] The First Respondent’s review of the decision of the Tribunal succeeded in the High Court which handed down judgment on 21 August 2014, and it is that judgment which is on appeal before us, the court *a quo* having granted leave to appeal.

[3] The issue in the court below was the application of the Revenue Appeals Tribunal Rules and the finding of the court that the Tribunal should not have accepted a pre-trial minute which the representative of the parties had prepared, without further enquiry regarding the minute.

[4] Since the basis of the appeal is that in reaching its conclusion the court conflated the rules relating to appeals on the one hand and applications on notice on the other, it is necessary to consider the rules in question in some detail.

[5] The Revenue Appeals Tribunal Act ("The Act") is divided into four parts. Part II contains specific provisions relating to the Tribunal and it is in turn divided into four divisions.

Division I contains provisions relating to the establishment of the Tribunal and Division II contains provisions relating to the administration and sittings of the Tribunal.

[6] Division III under the heading
HEARING, PROCEDURES, DECISIONS AND APPEALS
contains the following relevant provisions:-

1) Section 14(1) which provides that the procedure for
the Tribunal shall in general be regulated in terms of
Section 27.

2) Section 14(2) which reads:-

*“Notwithstanding subsection (1) the proceedings of the
Tribunal shall be conducted with as little formality and
technicality as possible, and the Tribunal is not bound by
the rules of evidence but may inform itself on any matter in
such manner as it thinks appropriate, subject to each party
having the opportunity to put his or her case to the Tribunal
in a reasonable manner”.*

3) Section 14(6) which reads:-

*“Proceedings before the Tribunal shall be commenced by the
lodging of an application in the form prescribed by the rules
made under Section 27, together with the prescribed fee, if
any, with the Tribunal”.*

[7] Legal Notice No. 133 of 2007 contains the rules made
under section 27 of the Act. The rules are also divided
into different parts, the relevant parts for the appeal
being Parts III and IV.

Part III, under the heading

PROCEDURES BEFORE THE TRIBUNAL

Contains, inter alia, the following:-

1) Rule 7(1) which reads ‘

“A taxpayer who is dissatisfied with the Commissioner General’s objection decision shall, if he or she wishes to appeal, within 30 days after receipt of an objection decision disallowing his or her objection, deliver to the Commissioner General a notice of appeal which shall be in such form as may be prescribed by the Commissioner General, and shall be signed by the taxpayer or his or her representative”.

2) Rule 8 which provides that if the Commissioner General wishes to oppose an appeal noted in terms of rule 7(1) he is to do so by filing a notice of intention to oppose the appeal supported by grounds of opposition, and

3) Rule 13 which makes provision for the holding of a pre-trial conference, lists the aspects of the dispute on which the parties shall attempt to reach consensus, and makes provisions for the filing of a pre-trial minute dealing with the matters considered at the conference.

[8] Part IV, under the heading APPLICATION ON NOTICE contains provisions for dealing with applications to the Tribunal.

Such applications are to be on notice, and must be supported by a founding affidavit. A respondent wishing to oppose the application must do so as he or she would in court proceedings and deliver an answering affidavit. Provision is also made for the delivery of a replying affidavit, where necessary.

[9] In prosecuting his appeal to the Tribunal, the First Respondent chose not to do so in the manner prescribed by Rule 7 (1) that is by delivering a notice of appeal supported by grounds of appeal. Instead he delivered not only a notice of appeal, but also a Special Power of Attorney, a founding affidavit and a supporting affidavit thereto with annexures. Clearly the First Respondent took the view that his appeal had to be prosecuted by way of an application on motion.

[10] The Appellants took the view that the provisions of the rules contained in Part III applied to the appeal, that the rules contained in Part IV did not, and answered the papers filed by the First Respondent by filing a Notice of Intention to oppose supported by a statement of grounds of opposition as prescribed by Rule 8.

[11] The application to the High Court was for the review of the acceptance by the Tribunal of a pre-trial minute which had been prepared by the representative of the parties and handed in to the Tribunal. The submissions on behalf of the First Respondent to the effect that the Tribunal should not have accepted the pre-trial minute found favour with the Judge *a quo* who granted the review. The Appellants come on appeal against the ruling.

[12] The Court *a quo* found that

- 1) The Rules of the Tribunal permitted the parties to hold a pre-trial conference;
- 2) A pre-trial conference was held;
- 3) The pre-trial minutes prepared presented to the meeting disclosed an accurate and correct account of what the parties had agreed to at the conference, yet it concluded that the acceptance of the minute by the Tribunal constituted a reviewable irregularity which warranted the setting aside of the decision of the Tribunal.

[13] The reasons which persuaded the Court “that there is a founded scepticism that the Tribunal has, for the stated reasons, procedurally administered justice” appear at different stages of the judgment. They are the following:

- 1) The Tribunal should not have received the pre-trial minute without the consent of the parties or without the minute being annexed to an affidavit;
- 2) The Tribunal was obliged to have explained to the parties the procedure it intending adopting with regard to the minute but failed to do so;
- 3) The Tribunal was obliged, in terms of the rules to have canvassed the admission of the minutes with the parties, but failed to do so.

[14] The Judge *a quo* found that the First Respondent was at large to have prosecuted his appeal to the Tribunal

either under Rule 7 or by way of an application on notice. The First Respondent having chosen to follow the latter route, he criticized the Appellants for not following the form of proceedings prescribed in Part IV. Although the judgment does not say so, I assume that it was because the Judge had considered the application procedure to be permissible and correct, that he required further explanation and safeguards for the admission of the pre-trial minute.

[15] Before us counsel for the First Respondent defended the judgment of the Court *a quo*, contending that:-

- 1) The wording of section 14(6) of the Act, which provides for proceedings before the Tribunal to be commenced by the lodging of an application in the form prescribed by the rules indicated that the appeal was to be commenced by an application on notice.
- 2) If the Appellants had been of the view that the First Respondent had followed the incorrect procedure by filing an affidavit instead of a simple statement with grounds of appeal, they should have objected to the procedure, and having failed to do so, were bound to the application process.
- 3) The Tribunal's failure to inform the First Respondent that the rules in Part III applied to the appeal meant that the application process was being followed.

[16] In my view there is no merit in any of these submissions. The premise that “application” in Section 14(6) means the application procedure in Part IV has no regard to the canons of interpretation and in particular the specific provisions of Part III which deal with procedures before the Tribunal.

[17] The learned Judge erred in finding that the First Respondent was at liberty to prosecute the appeal either under the provision of Part III on Part IV and he also erred in finding that the appeal could be prosecuted by way of application on notice.

I say this for the following reasons:

- 1) Section 14(2) of the Act makes it plain that appeal proceedings of the Tribunal are to be conducted with as little formality and technicality as possible, and that the Tribunal is not bound by the rules of evidence.
- 2) The required informality of the proceedings is spelt out in the rules in Part III which deal with procedures before the Tribunal. I have already recorded that the notice of an appeal and the opposition thereto is done by simply filing a statement supported by grounds supporting the statement.
- 3) The filing of affidavits in application proceedings is the very antithesis of informality.

- 4) The rules in Part III contain detailed provisions regulating the holding of a pre-trial conference and the subsequent filing of a minute of the conference. No such provision appears in Part IV.
- 5) Rule 18 in Part III under the heading **Procedure in the Tribunal** contains detailed provisions relating to the procedure to be adopted by an appeal Tribunal. It contains no requirement that evidence is to be on oath.
- 6) Under **Applications on Notice**, Rule 25(2) indicates which rules in Part III are to apply, to the extent applicable, *mutatis mutandis*, to Part IV. Rule 18 is not one of those rules.
- 7) Nowhere in Part IV is there any reference to the noting of an appeal or opposition to any appeal.
- 8) That the application procedure should not be used, is, in the words of the Appellants' attorney, put to rest by Rule 9 in Part III, which provides that "The issues in any appeal before the Tribunal will be those defined in the statement of the grounds of appeal read with the opposing statement of grounds of appeal".

[18] Although it may have been advisable for the Tribunal to have informed the First Respondents' attorney that affidavits were not required, its failure to do so does not make the proceedings irregular. All that happened was that in the course of the hearing the Tribunal was presented with a minute of a pre-trial conference which the court below found and been correctly prepared. The

parties having themselves agreed on procedures to be adopted by the Tribunal for the purpose of determining the appeal, the Tribunal was perfectly entitled to accept the minute, and to allow the matter to proceed as agreed in the minute. The ruling to the contrary by the court *a quo* can therefore not stand.


[19] In granting special leave to appeal to this court, the Judge *a quo*, after recording that such leave was reluctantly granted, set out in detail questions which he asked this Court to deal with. In my view it is not necessary to answer these questions individually as the answers appear clearly in this judgment.

[20] In the result the appeal succeeds with costs to be paid by the First Respondent.

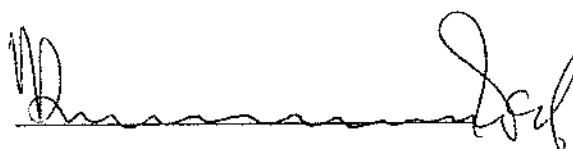
The judgment on the High Court is set aside and replaced with the following order:

“The application is dismissed with costs”.

I agree:

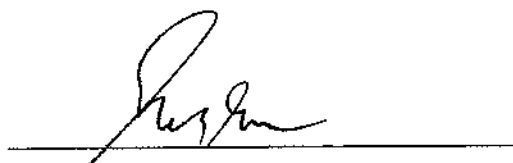


R.B. CLEAVER
ACTING JUSTICE OF APPEAL



P. MUSONDA
ACTING JUSTICE OF APPEAL

I agree:

A handwritten signature in black ink, appearing to read 'L. Molete', is written over a horizontal line.

L. MOLETE

ACTING JUSTICE OF APPEAL

Counsel for the Appellant: M. Dichaba

Counsel for the Respondent: K. Ndebele