



**IN THE HIGH COURT OF SOUTH AFRICA
NORTH WEST DIVISION, MAHIKENG**

Case Number: CA25/25

Regional Court Case Number: RC3/05/22

In the matter between:

MOTSEKI RAMPHODIDI

APPELLANT

and

THE STATE

RESPONDENT

Coram: WESSELS AJ

Date of hearing

15 AUGUST 2025

Judgment handed down

11 FEBRUARY 2026

Delivered: This judgment was handed down electronically by circulation to the parties' representatives via email. The date and time for hand-down of the judgment is deemed to be 14h00 on 11 February 2026.

Summary: Criminal Procedure — Appeal — Sentence — Procedure — Failure to note appeal in the Regional Court — Distinction between noting and prosecution of appeal — High Court lacking jurisdiction to grant condonation for late noting of appeal from the Magistrate's Court — Section 309(2) of the Criminal Procedure Act 51 of 1977 vesting exclusive power to extend period for noting in the court of first instance — Object of Rule 67 of the Magistrates' Court Rules — Appeal struck from the roll.

ORDER

The appeal is struck from the roll.

JUDGMENT

Wessels AJ

Introduction

- [1] This matter comes before this Court as an appeal against sentence (an effective sentence of 40 years imposed on 30 May 2022), following the appellant's conviction in the Regional Court, Potchefstroom, on two

counts of rape and one count of contravening the Immigration Act¹ Leave to appeal was granted by two Judges of this Division on petition in terms of section 309C(5)(a) of the Criminal Procedure Act² ('CPA').

- [2] A procedural issue has arisen that precludes this Court from entertaining the merits of the appeal at this stage. Specifically, the appellant failed to note the appeal in the Regional Court. Although it is of no moment, given the abortive nature of the appeal as appears from this judgment, the notice of appeal does not contain a court stamp from this Court either to indicate when it was filed.
- [3] The legal requirements for the valid commencement of an appeal are well-established in this Division. As articulated in *Botlhokoane v S*³, the noting of an appeal and its prosecution are two distinct procedural concepts undertaken in different forums. While the prosecution of an appeal takes place in the High Court, the noting of an appeal from a Regional Court must occur within that court.
- [4] This distinction is not merely formalistic. As explained in *Botlhokoane*⁴, the object of Rules 67(5) and 67(9) of the Magistrates' Court Rules is to ensure the magistrate is furnished with the grounds of appeal to afford the magistrate an opportunity to react and provide reasons for the judgment, sentence or ancillary order.
- [5] The appellant's failure to note the appeal in the court of first instance cannot be cured by this Court. The jurisdiction of the High Court to grant

¹ Immigration Act 13 of 2002.

² Criminal Procedure Act 51 of 1977.

³ *Botlhokoane v S* [2025] ZANWHC 186 para 4.

⁴ *Ibid* para 6.

condonation for the late noting of an appeal has been fundamentally altered by legislative amendments, as has been set out in another judgment by the full bench of this Court in *Mothoa v S*⁵. In this judgment, it was highlighted that the present version of s 309(2) of the CPA differs materially from the 1977 version. The same principle was reaffirmed in *Tekane and Another v S*⁶.

- [6] In terms of the current statutory framework, the power to extend the period for the noting of an appeal resides exclusively with the magistrate against whose decision the appeal is noted, or another magistrate of that same court if the presiding officer is materially unavailable. There is no provision for a High Court to grant condonation for the late noting of an appeal from the Magistrates' Court.
- [7] In the absence of a properly noted appeal or a successful application for condonation in the Regional Court, there is no valid appeal before this Court.
- [8] Consequently, in following the full bench decisions of this Division, the matter should be struck from the roll to allow the appellant to follow the peremptory procedural steps required by section 309(2) of the CPA and Rule 67 of the Magistrates' Court Rules.

Order

- [9] Resultantly, the following order is made:

⁵ *Mothoa v S* [2025] ZANWHC 187 para 4.

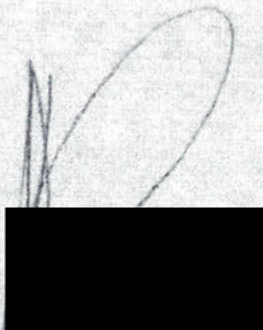
⁶ *Tekane and Another v S* [2025] ZANWHC 188.

The appeal is struck from the roll.

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M WESSELS
ACTING JUDGE OF THE HIGH COURT
NORTH WEST DIVISION, MAHIKENG

I agree

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A REDDY
JUDGE OF THE HIGH COURT OF SOUTH AFRICA
NORTH WEST DIVISION, MAHIKENG

APPEARANCES**Counsel for Appellant****:Mr TR Semino****Instructed by****:Legal Aid South Africa****:Mahikeng****Counsel for the Respondent****:Adv K Phetlhu****Instructed by****:Director of Public Prosecutions****:Mahikeng**