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

CASE NO: CA 65/2024

COURT A QUO CASE NO: RC16/2024

Reportable: No

Circulate to Judges: No

Circulate to Magistrates: No

Circulate to Regional Magistrates: No

In the matter between:

THABO EDWARD BANKIES

APPELLANT

and

THE STATE

RESPONDENT

*Judgment is handed down electronically by distribution to the parties' legal representatives by e-mail. The date that the judgment is deemed to be handed down is **24 FEBRUARY 2026 at 10h00.***

CORAM: MASIKE AJ & WESSELS AJ

ORDER

- (i) The appeal is struck from the roll.

JUDGMENT

MASIKE AJ

INTRODUCTION

- [1] Before us is an application for condonation for the late filing of the appeal and appeal against sentence. Mr Thabo Edward Bankies (“the appellant”), was arraigned on 23 April 2024 in the Regional Court for the District of North – West held at Schweizer - Reneke (“the court a quo”) before Regional Court Magistrate Mr B J Zulu (“the learned Regional Court Magistrate”) on the charges of kidnapping (“count 1”), robbery with aggravating circumstances as intended in s 1 of Act 51 of 1977 (“count 2”), rape (“count 3”) and murder (“count 4”).

- [2] It is alleged that the appellant on 26 February 2011 and at Ipelegeng in the District/Regional Division of North West, the appellant did unlawfully and intentionally deprive K[...] M[...] of her freedom of movement by means of taking her forcefully from the street to an abandoned building in Ipelegeng Sports ground, (count 1).
- [3] It is further alleged that the appellant committed the offence of robbery with aggravating circumstance read with the provisions of s 51(2), 52(2) and 52A and 52B of the Criminal Law Amendment Act 105 of 1997, that at all times the appellant acted in furtherance of common purpose, (count 2).
- [4] It is alleged further that the appellant contravened the provisions of s 3 read with s 1, 2, 50, 56(1), 56A, 57, 58, 59, 60 and 61 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007 as amended. Further read with s 51(1) and schedule 2 of the Criminal Law Amendment Act (“CLAA”) 105 of 1997 as amended. Further read with s 120 of the Children’s Act, 38 of 2005.
- [5] The provisions of s 51(1) of CLAA found application because the complainant in the matter was raped by more than one person, acting in execution or furtherance of a common purpose or conspiracy, (count 3)
- [6] It is lastly alleged that the appellant contravened the provisions s 51(1), 52(2), 52A and 52b of the Criminal Law Amendment Act 105 of 1997 with Part 1 and schedule 2, in that on 26 February 2011 and at Ipelegeng,

in the Regional Division of North West, the appellant did unlawfully and intentionally kill K[...] M[...] a female person, further that the appellant acted in furtherance of common purpose, (count 4).

- [7] The appellant was throughout the proceedings in the court *a quo* represented by Mr Simeno from Legal Aid South Africa. The appellant pleaded guilty to the proffered charges against him. A statement in terms of s 112(2) of Act 51 of 1977, the Criminal Procedure Act (“CPA”) was read into the record and handed up to the court *a quo*.
- [8] The s 112(2) statement of the appellant was accepted by the State. The learned Regional Court Magistrate accepted the contents of the s 112(2) statement and found the appellant guilty on all four of the proffered charges against the appellant.
- [9] Having found the appellant guilty of the proffered charges and having heard submissions from the legal representative of the appellant and the State on sentence, the learned Regional Court Magistrate, on 4 July 2024, sentenced the appellant to three years in respect of count 1, 15 years in respect of count 2, and life imprisonment in respect of count 3 and 4. The sentences in respect of count 1 and 2 were to run concurrently with the sentences imposed in count 3 and 4. In terms of s 103 of Act 60 of 2000 the appellant was declared unfit to possess a firearm and the court *a quo* ordered that the name of the appellant be included in the national register for sexual offenders in terms of s 50 of CLAA.

- [10] Aggrieved by the sentence imposed by the learned Regional Court Magistrate, the appellant approaches this Court for; firstly, condonation for the late filing of the appeal; and secondly to appeal against the sentence imposed in the court *a quo*.
- [11] Regrettably, this appeal has been carelessly handled by the attorneys of the appellant to the extent it becomes unnecessary to deal with the merits thereof.
- [12] The appellant relies on the provisions of s 309(1)(a) of the CPA to approach this, Court. The section reads as follows:

“309 Appeal from lower court by person convicted

(1)(a) Subject to section 84 of the Child Justice Act, 2008 (Act 75 of 2008), any person convicted of any offence by any lower court (including a person discharged after conviction) may, subject to leave to appeal being granted in terms of section 309B or 309C, appeal against such conviction and against any resultant sentence or order to the High Court having jurisdiction: Provided that if that person was sentenced to imprisonment for life by a regional court under section 51 (1) of the Criminal Law Amendment Act, 1997 (Act 105 of 1997), he or she may note such an appeal without having to apply for leave in terms of section 309B: Provided further that the provisions of section 302 (1) (b) shall apply in respect of a person who duly notes an appeal against a conviction, sentence or order as contemplated in section 302 (1) (a).”
(own emphasis)

[13] On 8 July 2022, Rule 67(5A) (a) (i) of the Magistrate's court rules ("MCR") were amended to read as follows:

"(5A) (a) (i) A person contemplated in the first proviso of section 309(1)(a) of the Criminal Procedure Act, 1977, who wishes to appeal against his or her conviction or sentence or order, shall do so in writing to the registrar or clerk of the court within 10 days after the passing of the sentence or order following on the conviction and shall also send a copy of such notice of appeal to the director of public prosecutions concerned or in a case in which the prosecution was not at the public instance, to the prosecutor concerned. (own emphasis)

[14] There are several judgments that have been penned by Judges from this Division of the High Court dealing with Rule 67 of the MCR. In *Letshaba and Another v The State*¹ (*Letshaba*) Petersen ADJP writing for the court said the following:

"The automatic right of appeal has through the amendment of Rule 67(5A) considered with s 309(2) of the CPA, through law of general application, brought about a limitation of the automatic right of appeal. An appeal noted by an appellant sentenced to life imprisonment is no longer an unfettered right with no further obligations placed on such appellant."

[15] Section 309 (2) of the CPA reads as follows:

"(2) An appeal under this section shall be noted and be prosecuted within the period and in the manner prescribed by the rules of court: Provided that the magistrate against whose decision or order the appeal is to be noted, or if he or she is unavailable

¹ (CA59/2023) [2025] ZANWHC 180; 2025 (2) SACR 456 (NWM) (11 September 2025) para 6

any other magistrate of the court concerned, may on application and on good cause shown, extend such period” (own emphasis)

[16] The “rules of court” referred to in s 309(2) of the CPA are, inter alia, Rule 67 of the MCR².

[17] The appellant was obliged to have noted his appeal against the sentence imposed by the learned Regional Court Magistrate, within ten days of the passing of the sentence. The notice of appeal was filed in the court *a quo* on 24 July 2024, which is well outside the prescribed ten days period, as evince by the date stamp of the Office of the Clerk of the court *a quo*.

[18] The failure to note the appeal within the period in terms of Rule 67(5A)(a)(i) of the MCR, necessitated the bringing of an application for condonation for the late noting of the appeal.

[19] The question that begs an answer is whether the appellant was correct in bringing the application for condonation for the late filing of the appeal in this Court. This is a question that has been addressed by Wessels AJ in *Botlhokoane*. In *Botlhokoane* Wessels AJ writing for the court said the following with regard to condonation for the late noting of an appeal outside the ten days period provided for in Rule 67(5A)(a)(i) of the MCR:

“Section 309(2) of the CPA is clear in that it provides for the extension of the period of the noting of an appeal, laid down in Rule 67, by the magistrate against ‘whose

² *Botlhokoane v S (Botlhokoane)* (Appeal) (CA19/25) [2025] ZANWHC 186 (11 September 2025) para 13

decision or order the appeal is to be noted'. It follows that, when condonation is sought for the 10-day period allowed for noting the appeal, the application to extend this period must be brought in the Regional Court.”³

[20] Petersen ADJP echoed the same sentiments of Wessels AJ in *Letshaba* when he said the following:

“If the appeal is not noted within 10 days as envisaged by Rule 67(5A) (i) of the MCR, an appellant must apply for condonation sentenced to imprisonment for life, the appellant must apply for condonation to the magistrate concerned or if not available any other magistrate, who grant same on good cause shown.”⁴

[21] In *Mothoa v S*⁵ (*Mothoa*) and *Tekane and Another v S*⁶ (*Tekane*) Petersen ADJP writing for the court said:

“There is no provision for the High Court to grant condonation for the late noting of an appeal (sic late filing of an appeal). There is therefore no need for any application for condonation, termed “for the late filing of the appeal”. In fact, save for the peremptory provisions of s309(2) and Rule 67 of the Magistrate’s Court Rules, Uniform Rule 51 of the High Court Rules provides no further timeframes for the prosecution of a criminal appeal from the Magistrate’s Court, necessitating a condonation application to the High Court.”⁷

³ *Botlhokoane* at Para 14

⁴ *Letshaba* (supra) Para 26

⁵ (CA27/2025) [2025] ZANWHC 187 (16 September 2025)

⁶ (CA29/2025) [2025] ZANWHC 188 (16 September 2025)

⁷ *Mothoa* Para 4 and *Tekane* Para 6

[22] The application for condonation for the late filing of the appeal of the appellant, which should read application for condonation for the late noting of the appeal, was filed in the wrong court. The Regional Court was the correct court to bring the application for condonation for the late noting of the appeal. The application should have been brought before the learned Regional Court Magistrate and if he is not available before any other magistrate.

[23] Due to the fact that there being no order condoning the late noting of the appeal and the appellant having brought the application for condonation for the late noting of the appeal in the wrong court, the appeal is not properly before us.

ORDER

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

(i) The appeal is struck from the roll.

T MASIKE
ACTING JUDGE OF THE HIGH COURT OF SOUTH AFRICA
NORTH WEST DIVISION, MAHIKENG

I agree

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

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Date Heard: 9 May 2025

Date Handed Down: 24 February 2026