



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

Not reportable

Case no: CA 46/2019A

Regional Court case no:RC39/2016

In the matter between:

KGOSIETSILE LAWRENCE MZELENI

APPELLANT

and

THE STATE

RESPONDENT

Coram: Reddy J *et* Wessels AJ

Heard: 11 April 2025 on the papers, reallocated on 19 March 2026

Delivered: This judgment was handed down electronically, circulated to the parties' representatives via email, uploaded to CaseLines, and released to SAFLII. The date and time for the handing down of the judgment are deemed to be 16h00 on 20 April 2026.

Summary: Criminal procedure – appeal against sentence – whether appeal properly before this Court – non-compliance with peremptory provisions of rule 67(5), (6) and (7) of the Magistrates’ Courts Rules – appeal struck from the roll.

ORDER

The appeal is struck from the roll.

JUDGMENT

WESSELS AJ

[1] This is an appeal against a sentence of seven years’ imprisonment imposed on 22 May 2019 by the Regional Court, Taung, following the appellant’s conviction on a charge of culpable homicide. The appellant pleaded guilty in terms of s 112(2) of the Criminal Procedure Act 51 of 1977 (‘the CPA’) and was sentenced to 7 years imprisonment. Leave to appeal against sentence was granted by the court *a quo* on 12 June 2019.

[2] This appeal forms part of the Special Appeals Project of the North West High Court, initiated by the Honourable Judge President Hendricks to address and eradicate the backlog of criminal appeals in this Division. The appeal was

initially allocated to a previous panel of judges. However, the judgment was not scribed and consequently, due to this delay, the matter was reallocated to the present panel on 19 March 2025.

[3] The notice of appeal was filed only in April 2025, nearly six years after leave was granted. The appellant seeks to challenge the sentence on various grounds, including that the trial court overemphasised the seriousness of the offence and failed to follow the recommendations of a probation officer. The respondent, the State, does not oppose the appeal, conceding that the sentence is ‘unreasonably excessive’. However, before this Court can entertain the merits of the appeal, it must first be satisfied that the appeal has been properly noted and prosecuted in accordance with the peremptory provisions of the CPA and the Magistrates’ Courts Rules (‘MCR’). That is the only issue for determination in this judgment.

The legal framework

[4] Section 309(2) of the CPA provides:

‘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 any other magistrate of the court concerned, may on application and on good cause shown, extend such period.’

[5] Section 309B(4)(a) of the CPA further provides that when leave to appeal is granted, the clerk of the court must, in accordance with the MCR, transmit copies of the record and all relevant documents to the registrar of the High Court concerned.

[6] Rule 67(5) of the MCR peremptory and requires that, upon leave to appeal being granted, the clerk of the court shall prepare a copy of the record and place it before the judicial officer, who shall within 15 days furnish a written statement setting out: (a) the facts found proved; (b) reasons for factual findings specified in the grounds of appeal; and (c) reasons for rulings on questions of law or evidence.

[7] Rule 67(6) then requires the clerk to inform the appellant that the magistrate's statement has been furnished. Rule 67(7) allows the appellant 15 days thereafter to amend the grounds of appeal. Only after compliance with these steps does Rule 67(15)(a) oblige the clerk to transmit the record to the registrar of the high court.

[8] These provisions are not directory; they are peremptory. This Court recently restated that position in *Mothoa v S*¹ (CA27/2025) [2025] ZANWHC 187 (16 September 2025). In *Mothoa*, Petersen ADJP (with Hendricks JP concurring) held:

‘[10] ... The ineluctable deduction is that the record was prepared by the appellants’ attorneys of record ... since it is not certified by the clerk of court. Whilst it is the duty of the clerk of court to prepare the record and to certify it, *in casu*, the final responsibility to ensure that the appeal record is complete and in order, rests with the attorney.

...

[14] There has been non-compliance with the peremptory provisions of subrules 67(5), (6) and (7). It is only once subrules 67(5), (6) and (7) have been complied with that the appeal record is transmitted to the registrar of this Court by the clerk of court.

¹ *Mothoa v S* (CA27/2025) [2025] ZANWHC 187 (16 September 2025) paras 10, 14, 19 and 20.

...

[19] It is peremptory that subrules 67(5), (6) and (7) be complied with before a matter is transmitted on appeal to the High Court.

[20] Against the aforesaid exposition of the law, the appeal is not properly before this Court.'

[9] The court in *Mothoa* accordingly struck the appeal from the roll. I can find no material distinction between that case and the present one.

Application to this appeal

[10] The record transmitted to this Court does not bear any certificate by the clerk of the court as required by Rule 67(5). There is no indication that the clerk of the court prepared the record or placed it before the trial magistrate.

[11] The notice of appeal filed in April 2025 appears to have been prepared by the appellant's current legal representatives, but had not been served on the clerk of the Magistrate's Court. The State's heads of argument, while conceding the merits, do not address these procedural defects. That is of no consequence, as a concession by the respondent cannot cure non-compliance with peremptory statutory provisions. The appeal is either properly before this Court or it is not. In the present appeal, it is not.

[12] The appellant has a constitutional right of appeal in terms of s 35(3)(o) of the Constitution. That right, however, must be exercised in accordance with the procedural rules. Where an appellant or his legal representatives fail to follow the clear, peremptory steps prescribed by the CPA and the MCR, the appeal cannot proceed.

Conclusion

[13] The appeal is not properly before this Court. Accordingly, the following order is made.

Order

The appeal is struck from the roll.



M WESSELS

ACTING JUDGE OF THE HIGH COURT

NORTH WEST DIVISION, MAHIKENG

I agree




A REDDY

JUDGE OF THE HIGH COURT

NORTH WEST DIVISION, MAHIKENG

Appearances:

For the appellant: Adv Mm Mabodja

Instructed by: Legal Aid Board
Mahikeng

For the respondent: Adv Mathule

Instructed by: Director of Public Prosecutions
Mmabatho