IN THE HIGH COURT OF SOUTH AFRICA
(WESTERN CAPE DIVISION, CAPE TOWN)

Case No: 1629/20219

In the matter between:

BOTHATA MOSIKILI **Appellant**

and

SOUTH AFRICAN BOARD OF SHERIFFS **Respondent**

JUDGMENT DELIVERED ELECTRONICALLY FRIDAY, 11 JUNE 2021

NZIWENI AJ

[1] This is an appeal brought under section 61 (1) (c) of the Sheriffs Act 90 of 1986, (the Sheriffs Act). The appellant was found guilty on 23 November 2017, at a disciplinary hearing on a slew of misconduct charges. Pursuant to the guilty verdict, a recommendation was made by the disciplinary committee convened in terms of section 18(1) (c) of the Sheriffs Act, to remove the appellant from his position as a Sheriff.

[2] Following the disciplinary committee findings, the appellant unsuccessfully appealed to the appeal committee against his removal as a sheriff. Having failed in the appeal committee, he is now appealing to this Court against the outcome of the disciplinary process.

[3] The respondent in its opposition to the appeal, raised a point *in limine*, that this matter should not be heard by one Judge, but by two Judges as it is a civil appeal in terms of section 14(3) of the Superior Courts Act 10 of 2013 (the Act).

[4] On the other hand, it was submitted on behalf of the appellant that this appeal is a statutory appeal.

[5] Section 14 of the Superior Courts Act 10 of 2013 (the Superior Court Act) provides:

> "14. (1) (a) Save as provided for in the Act or any other law, a court of a Division must be constituted before a single judge when sitting as a court of first instance for the hearing of any civil matter...
>
> 14(3) Except where it is in terms of any law required or permitted to be otherwise constituted, a court of a Division must be constituted before two judges for the hearing of any civil or criminal appeal..."

The issue

The only issue this court is called to determine is whether this appeal should be heard by a single judge or by two judges.

The word 'civil appeal'

[6] A long line of cases in our jurisprudence reveal that in the normal course of events, the High Court gets appeals from diverse quarters including the magistrates' courts, tribunals and administrative bodies. What is striking with all the different appeals is that, all of them are ordinarily referred to as "appeals".

[7] In the case of *Trustees, Avenue Body Corporate v Shmaryahu and Another 2018 (4) SA 566 (WCC)* the appeal Court was constituted by two Judges, and the court introduced a procedure to be followed for an appeal brought in terms of section 57 of the Community Schemes Ombud Service Act 9 of 2011. The Court in the *Shmaryahu* matter supra, described the appeal it was seized with as a statutory appeal.

[8] For purposes of the present matter, the significance and relevance of the Shmaryahu case supra is where Binns-Ward J and Langa AJ, in footnote 37 explained the meaning of the term "civil appeal". A civil appeal was described in the following fashion:

> "The reference to a 'civil appeal' in s 14 of the Superior Courts Act is to ***an appeal to the High Court from the judgment or order of a lower cour***t (my own emphasis and underlining); not to an appeal of the third type mentioned in *Tikly and Others v Johannes NO and Others* **1963 (2) SA 588** (T) at the place mentioned later in this paragraph... If the adjudicator's order is to be challenged, that must be done in terms of s 57. Section 57 (which, as mentioned, gives rise to a different type of appeal to that from the judgment of a court) applies

irrespective of whether the impugned order has been registered by a clerk of court or registrar."

[9] Binns- Ward J, at paragraph 25, went on to say:

"It is well recognised that the word 'appeal' is capable of carrying various and quite differing connotations. One therefore has to look at the language and context of the statutory provision in terms of which a right of appeal is bestowed in a given case to ascertain the juridical character of the remedy afforded thereby. An appeal in terms of s 57 is not a 'civil appeal' within the meaning of the Superior Courts Act 10 of 2013. What may be sought in terms of s 57 is an order from this court setting aside a decision by a statutory functionary on the narrow ground that it was founded on an error of law. The relief available in terms of s 57 is closely analogous to that which might be sought on judicial review. The appeal is accordingly one that is most comfortably niched within the third category of appeals identified in *Tikly and Others v Johannes NO and Others* 1963 (2) SA 588 (T), at 590-591."

[10] In the matter of *Tikly v Johannes 1963 (2) SA 588 (T)*, the third category of appeal, is defined as follows at 590H-591A:

"(iii) a review, that is, a limited re-hearing with or without additional evidence or information to determine, not whether the decision under appeal was correct or not, but whether the arbiters had exercised their powers and discretion honestly and properly..."

[11] Back to the instant case, section 61 (2) of the Sheriffs Act provides the following:

"The court shall examine and consider an appeal lodged with it in accordance with subsection (1), and may-

(a) if it is of the opinion that the disciplinary committee or Board, as the case may be, has not acted in accordance with the provisions of this Act, set aside the decision appealed against or substitute therefor any other decision which the disciplinary committee or Board could have made;

(b) confirm the decision appealed against; or

(c) give such other order, including any order as to costs, as it may consider fit."

[12] In the Tikly matter (supra) at 591, it is stated that the sense in which the word "appeal" is used must be determined in accordance with the Act under which the appeal is brought. The logical corollary is that; aside from the appeals mentioned in section 14 of the Superior Courts Act, there are also other different forms of appeals.

[13] I hasten to add that I find it quite remarkable and significant that in both the matters of *Tikly* and *Shmaryahu,* the Courts emphasized that the word "appeal" can have different and various connotations.

[14] From all the aforegoing it invariable flows that; a reference to a civil appeal does not automatically translate to mean an appeal in terms of section 14 of the Superior Courts Act. Hence, I firmly disagree with the assertion proffered on behalf of

the respondent that; in the particular circumstances of this case that, the word "appeal" necessarily denotes a meaning that is contemplated in section 14 of the Superior Courts Act.

[15] When particular regard is paid to the fact that Binns-Ward J specifically states in Shmaryahu, that the reference to a 'civil appeal' in s 14 of the Superior Courts Act is to an appeal to the High Court from the judgment or order of a **lower court;** does strongly suggest that a civil appeal stems from an order or judgment of a court. In this regard, it is significant to note that, in the matter of *Kondile v Canary and Another (29869/2013) [2018] ZAGPPHC 412 (16 May 2018),* at paragraph 57, it was also stated that a ruling of a tribunal is not an order or judgment.

[16] It is for this reason that I hold the view that the word "appeal" cannot in the present context of this case, mean a civil appeal as envisaged in the Superior Courts Act, but rather means a statutory appeal.

Statutory Appeal

[17] Furthermore, as I have already mentioned that, it is clearly implicit in Shmaryahu's and *Kondile's* cases that rulings made by administrative bodies are not orders or judgments. The term statutory appeal implies that an appeal is a creature of a statute. Put differently, statutory appeal is when the right of appeal to the High Court is specifically created by a statute.

[18] In the instant matter, it is highly significant to keep in mind that the Sheriff Board is a statutory professional body which derives its existence and powers from a statute. It is thus inevitably the case that the appellate jurisdiction to the High Court is statutorily provided by the Sheriffs Act.

[19] Chiefly, the sheriff Board is tasked with administrative decision making. Hence its decisions are administrative decisions unlike the decisions of the lower court.

[20] Notably, in my view the present matter is a statutory appeal because it gained access to the High Court through the provisions of section 61 of the Sheriffs Act. Section 61 not only grants the statutory right of appeal but also determines the procedure to be followed in the appeal.

[21] For all intents and purposes, if regard is had into the provisions of the Superior Courts Act and what is stated above, it becomes plain that; the Act draws a sharp and purposeful distinction between a statutory appeal and a civil appeal. In my mind, Section 14 of the Superior Courts Act highlights that the differences between a civil appeal and a statutory appeal are not purely cosmetic as the counsel on behalf of the respondent would like this court to view.

[22] Generally, it is also accepted that statutory bodies or tribunal rulings are mere administrative actions and they do not create precedents like a court. Their proceedings are also not as formalistic as court proceedings.

[23] From the aforegoing, the inescapable conclusion therefore, is that, a statutory appeal is not an appeal in the strict sense of the word. Hence it is my view that the appeal Court in a statutory appeal fundamentally plays a supervisory role.

Conclusion

Whether more than one judge should sit on this appeal

[24] I was made to understand that generally, statutory appeals or appeals coming from administrative bodies are allocated to a single judge in this Division, unless a contrary procedure is provided for in a statute. Hence, the Judge President, assigned the matter to this court, consisting of a single judge.

[25] Additionally, the volume of statutory appeals may impose a severe burden on court rolls. Thus the practise of a single judge also becomes a very critical and practical tool for caseload management. This is because, it enables speedy and swift disposal of a case by one judge, instead of having two judges seized with the one matter. Therefore, apart from caseload management, judicial manpower also comes to the fore.

[26] By all accounts, an appeal of this nature should be heard by a single judge unless a statute provides otherwise or a judge considers that it is appropriate for the appeal to be heard by a Full Court. See Thuketana v Health Professions Council of South Africa 2003 (2) SA 628 (T).

Costs

[27] It is a settled principle that in the ordinary course, costs follow the results. The appellant in this regard has been successful, therefore the rule of practise has to be applied.

[28] It is for these aforegoing reasons that I grant the following order:

The respondent's point *in limine* is dismissed with costs.

CN NZIWENI

Acting Judge of the High Court

Appearances

Counsel for the Applicant : Mr SJ Koen

Counsel for the Respondent : Adv A Montzinger