

**IN THE REGIONAL COURT FOR THE REGIONAL DIVISION FOR MTHATHA
HELD AT MTHATHA**

Case no: **RCUMD 43/2013**

In the matter between:

NCEDILE LUMKWANA

Appellant

and

THE STATE

Respondent

NOTICE OF APPEAL

BE PLEASED TO TAKE NOTICE THAT prior to the promulgation of section 10 of Act 42 of 2013, which was published in GG 37254 of 22 January 2014, the Appellant was granted leave to appeal against his sentence of life imprisonment as imposed on 13 September 2013 by the Regional Magistrate, Mthatha under above case number.

BE PLEASED TO TAKE FURTHER NOTICE THAT as a result of the retrospective operation of section 10 of Act 42 of 2013 the Appellant now has an automatic right to appeal against his conviction/s of rape on 13 September 2013.

BE PLEASED TO TAKE FURTHER NOTICE THAT the grounds for the appeal against his conviction(s) are as follows:

1. That the State did not prove beyond a reasonable doubt that the Appellant had raped the Complainant.

2. That the Regional Magistrate misdirected herself in evaluating the charges against the Appellant, in particular as:
 - 2.1. The Appellant was charged with only two counts of rape, to wit one in 2010 and one in 2011 and both being perpetrated at Illitha;
 - 2.2. The Learned Magistrate erred by summarising the charge/s against the Appellant as being a single rape charge consisting of rapes on the Complainant on numerous occasions between 2010 and 2011;
 - 2.3. Consequently the Learned Magistrate erred in finding the Applicant guilty as charged.

3. That the Regional Magistrate misdirected herself in the evaluation of the Complainant's evidence, more particularly as she:
 - 3.1. Only paid lip service to the cautionary rule.
 - 3.2. Referred to an unknown text book which contradicts the common law cautionary rule.
 - 3.3. Accepted the Complainant's evidence despite having found her evidence unreliable in many aspects and in respect of many of the alleged rape incidents.

4. That the Regional Magistrate sought to find corroboration for the Complainant's evidence in aspects where there were no corroboration to be found.
5. That the Regional Magistrate erred in accepting the J88 form in terms of section 212 of the Criminal Procedure Act and misdirected herself by accepting any evaluation or conclusions made therein.
6. That the Regional Magistrate erred in rejecting the Appellant's mother's evidence on whether her garden was functional at the time of the rapes, based on whether the Regional Magistrate's own garden was green or not.
7. That the Regional Magistrate should have found that the Appellant's version was reasonably possibly true and should have acquitted him.

KINDLY TAKE NOTICE FURTHER THAT the clerk of the criminal court is requested to prepare this record for appeal purposes.

DATED AT MTHATHA THIS 18TH DAY OF JUNE 2014.

LEGAL AID SOUTH AFRICA

Per:

Mthatha Justice Centre

22 Durham Street

Mthatha

(Ref: M. MAHLOMBE/LillaC)

Tel: 047- 5014600

TO: **THE CLERK OF THE REGIONAL COURT**
REGIONAL COURT
MTHATHA

AND TO: **SENIOR STATE PROSECUTOR**