

CRI/A/55/81

IN THE HIGH COURT OF LESOTHO

In the Appeal of :

TS'ELISO KHAU

Appellant

v

R E X

Respondent

REASONS FOR JUDGMENT

Filed by the Hon. Mr. Justice F.X. Rooney
on the 12th Day of January, 1982.

Mr. M.G. Mofolo for the Appellant
Mr. Kabatsi for the Crown.

When this appeal against sentence came for hearing on the 11th December, 1981, I alleviated the severity of sentence to some extent. These are my reasons for taking that course.

The accused was charged before Mr. E.T. Mophethe at Maseru with the theft of two bags of beans, the property of the Lesotho Government. He pleaded guilty and on conviction was sentenced to 18 months imprisonment.

According to the Public Prosecutor, the accused was employed to manage a cooperative at Maseru. His main duty was to receive goods into the store and sell them on behalf of the Government. On the 17th October, 1981, two detectives went to the store with marked R10 bank notes. They asked the accused to sell them two bags of beans. Warrant officer Ramoholi paid the accused M80.00 with the marked notes and took away the two bags of beans. The accused did not follow the normal procedure which required the buyers to pay the cashier

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and obtain a receipt. Instead, the accused put the marked notes in his pocket.

It was further stated that the correct price of the beans was M124.80. No explanation was offered or asked for by the magistrate as to why the beans were sold at less than their ordinary price. The facts suggest that some conversation took place between the accused and the two police officers preceding the transaction in the course of which the reduced price was agreed. In my view the magistrate ought to have inquired closely into this aspect of the matter in order to determine the extent and nature of the temptation put in the way of the accused by the two policemen. If such information had been obtained by the magistrate it might have shown that the accused had been induced by the police to commit a crime. This would have been a relevant consideration affecting the severity of the sentence. (R. v. Small 1968) 3 S.A. 561. While I agree with the magistrate that the theft of Government property has become a prevalent and serious matter which often merits severe punishment (Fano v. R. 1980)(1) LLR 146), the considerations I have mentioned moved me to lessen the punishment by conditionally suspending 9 months of the sentence of imprisonment imposed upon the appellant.

F.X. ROONEY

12th January, 1982.

Attorney for the Crown : MLaw Office.
Attorney for the Appellant. Mr. M.G. Mofolo.