CRI/A/88/82

IN THE HIGH COURT OF LESOTHO

In the Appeal of :

MOLOPI KOAESA Appellant

v

REX Respondent

REASONS FOR JUDGMENT

Filed by the Hon. Chief Justice, Mr. Justice T.S. Cotran on the 30th day of December 1982.

The appellant, who was charged with theft of a motor vehicle, was found guilty of receiving the same knowing it to be stolen.

The appellant was found in possession of the vehicle amply proved, indeed conceded, to have been stolen from Johannesburg "sometime" in April 1981, on the 7th May 1981. not 1982 (see the evidence of Peter Moonsamy at lines 32-34 and the magistrates manuscript) at his home near Leribe in Lesotho.

The period between theft and finding in possession was quite obviously recent for a commodity of this nature - not more than 5 weeks maximum.

The appellant had no papers or documents in respect of the vehicle and did not have its keys. The appellant was asked for an explanation. Of course no onus rests on him to give any explanation, but he did say that the vehicle was left with him by a certain Joe Ndhlovu of Naleli, Soweto, whose telephone number was 9306117. Two other vehicles were found with the appellant in addition to the vehicle subject matter of this charge. The prosecution witness (PW2) should not have been asked about these at all (since they were subject to other charges in separate trials) but Mr. Mofolo

/the appellant's

the appellant's counsel, elicited from the witnesses further information on these last two vehicles. It appears that the appellant explained these last two were left with him by a John Mokoena. The appellant was allowed by the police officer to use a telephone. The police officer testified that the appellant spoke to a person called "Buti" and the conversation was about fixing a date for "Buti" to come to Maseru. There was no conversation about the vehicle subject matter of this appeal or the two other vehicles found in the appellant's possession. The magistrate says that that conversation was admissible as an "exception to the hearsay rule". What the appellant said on the telephone in the police officer's presence and within his hearing (for what it is worth) is not hearsay but direct evidence.

Mr. Mofolo's argument is that the appellant's explanation may be possibly true, viz, that someone called Ndhlovu dumped the vehicle at the appellant's compound and that the onus was on the Crown to disprove beyond reasonable doubt that this Ndhlovu did not exist. I must reject this. The Crown proved theft, proved possession by the appellant, proved that that possession was recent, and have adduced circumstances from which an inference of guilt may (not necessarily must) be drawn.

The appellant elected to keep silent.

In the magistrate's view guilty knowledge that the vehicle in question has been stolen has been proved beyond reasonable doubt. I have no reason to differ from this conclusion.

The sentence of six months imprisonment has struck me as lenient. The menace of vehicle thefts is well known and has been referred to in many decisions of the High Court. The only reason why I refrained from enhancing it is the fact that the appellant is serving another sentence of 12 months.

Will the Registrar endorse the warrant that the six months imprisonment under this charge will begin to run consecutively to the sentence the appellant is now serving.

CHIEF JUSTICE
30th December 1982

For Appellant: Adv. Mofolo
For Respondent: Miss Moruthane