

IN THE HIGH COURT OF LESOTHO

In the Appeal of :

MICHAEL LITS'IBA

Appellant

v

R E X

Respondent

REASOND FOR JUDGMENT

Filed by the Hon. Mr. Justice F.X. Rooney
on the 1st day of April, 1982.

Mr. Sello for the Appellant
Mr. Kamalanathan for the Crown.

The appellant and the two other persons were charged with the crime of fraud. The charge read as follows

"That the said Accused are charged with the crime of Fraud. In that upon or about the 22nd October, 1980 and at or near Queen II Hospital in Maseru district, the said Accused did each or one other or all of them unlawfully and with intent to defraud misrepresent to Kilbarchan Colliery Life Assurance plan, that a certain document to wit Death Certificate which they then and there produced and exhibited to Kilbarchan Colliery Group Life Assurance plan, was a copy of Death Certificate of Clement Khotso Lerata and according to the said copy they should receive the sum of R1,450 for the death of Clement Khotso Lerata whereas the said Accused at the time made the aforesaid misrepresentation well knew that the said Clement Khotso Lerata was not dead and that they were not entitled to receive the sum of R1,450 under the said death certificate.

On the 19th August, 1981, the appellant was convicted as charged by Mr. S.M. Ntsoele. Both his co-accused were found not guilty. The magistrate found that the following facts had been proved.

- " 1) That Accused is a civil servant at QUEEN ELIZABETH II Hospital and that he is solely responsible for the said hospital Record Office.
- 2) That Accused knew (or ought to have known) that there was no such person as CLEMENT KHOTSO LERATA who died at Queen Elizabeth II Hospital, even although a letter from the Chief of Abia (PW.6) was to that effect.
- 3) That be that as it may, he persuaded one Dr. Seqhobane. (PW.3), a trainee doctor there being to issue a death certificate on the 22nd October, 1980 and that all the information on the certificate was given by Accused to P.W. 3, except the cause of death.
4. That without the permission and knowledge of the Suprintendent of Queen Elizabeth II Hospital, Chale Moji (PW.2) he went to his office, where he impressed the rubber stamp of the Suprintendent upon the death certificate on the 6th November, 1980.
5. That on the 26th November, 1980, at about 9.00 p.m. P.W.2 found Accused 3 at his home where he related to him that he had used his rubber stamp as already related and ultimately gave it to a certain woman. The evidence-in-Chief of P.W.3 details what Accused 3 said to him.
- 6) That the death certificate in question, which Accused gave to a certain woman, ultimately reached the KILBARCHAN COLLIERY LIFE ASSURANCE PLAN, who in turn wrote to P.W.1 who represents them thus potentially prejudicing KILBARCHAN COLLIERY LIFE ASSURANCE PLAN, P.W.2 and P.W.3 as well."

At the hearing of the appeal, Mr. Kamalanathan for the Crown was unable to support the conviction. He conceded that there was no evidence that the appellant knew that the death certificate was obtained for the purpose of submitting it to the Kilbarchan Colliery Group Life Assurance Plan in order to obtain money by fraud. Furthermore, there was no evidence that the person named in the death certificate was alive or that the appellant knew that he was not dead.

3/ The facts

- " 1) That Accused is a civil servant at QUEEN ELIZABETH II Hospital and that he is solely responsible for the said hospital Record Office.
- 2) That Accused knew (or ought to have known) that there was no such person as CLEMENT KHOTSO LERATA who died at Queen Elizabeth II Hospital, even although a letter from the Chief of Abia (PW.6) was to that effect.
- 3) That be that as it may, he persuaded one Dr. Seghobane. (PW.3), a trainee doctor there being to issue a death certificate on the 22nd October, 1980 and that all the information on the certificate was given by Accused to P.W. 3, except the cause of death.
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The facts found by the magistrate did not support the charge as framed. The basis of the prosecution case was that the appellant or one or other or his co-accused made a misrepresentation to the Kilbarchan Colliery Group Life Assurance Plan in order to obtain R1,540 from that concern. There was no finding that any such misrepresentation was made nor could there have been on the evidence adduced. If the prosecution had chosen to charge the appellant with forgery of the death certificate, they might have had a better case.

On the 23rd March, 1982, the appeal was allowed and the conviction and sentence of 1 year's imprisonment imposed upon the appellant were set aside.

F.X. ROONEY.

JUDGE

1st April, 1982.

Attorney for the Appellant : Mohaleroe, Sello & Co.
Attorney for the Crown : Law Office.