

IN THE HIGH COURT OF LESOTHO.

In the matter of :

THAKALIOLI RAMOEKETSI

Appellant

V

R E X

Respondent

REASONS FOR UPHOLDING THE APPEAL

Filed by the Hon. Mr. Justice M.P. Mofokeng
on the 2nd day of August, 1982.

The appellant was charged in the Subordinate Court of Maseru with contravening the provisions of S. 3(1) read with (4) of the Deserted Wives and Children Proclamation 60 of 1959 as amended.

The complainant stated in her evidence that she left the accused in 1964. During their separation she never had intercourse with him for sixteen years. However, in her own words she had different children with different men. She refers to them as her friends. Initially those men on their own initiative, supported these children but eventually they stopped. She then brazenly says, and these are her own words: "I want that accused be ordered to maintain these three children because I wanted to be helped or maintained by the men who I was in love with as a result of his negligence."

The learned magistrate must have realised that there was no basis in law to have criminally charged the appellant. He was accused of not supporting adulterine children. Surely through the complainant herself, the Crown had totally not proved its case. The complainant had invoked criminal proceedings

/against

against the accused as a purely punitive measure. The Court does not allow that (see Khosi v Rex, 1976 LLR. 161).

As for the order of maintenance for the complainant personally, it is not quite clear why it was made. She clearly informed the Court that she lived in adultery proof of which was the birth of a number of children. This act on her part had not been forgiven or condoned by the accused. In terms of the clear unambiguous provisions of S. 10(1) of Proclamation 60 of 1969 she was not entitled to that order of maintenance.

In these circumstances the appeal is upheld and it is ordered that the appeal deposit be refunded to the appellant.

Mr. Peete, Counsel for the respondent, very fairly in my view did not support the conviction.

J U D G E.

For the Appellant : Mr. Maqutu
For the Respondent : Mr. Peete