

IN THE HIGH COURT OF LESOTHO

In the Appeal of :

RAPHAEL MAHLAHA
CHAKA MAKAU
MPHO MAKAU

1st Appellant
2nd Appellant
3rd Appellant

V

R E X

Respondent

J U D G M E N T

Delivered by the Hon. Mr. Justice M.P. Mofokeng
on the 10th August, 1982.

Appellant, together with two others, was charged in the subordinate court of Leribe with the crime of theft. The amount involved was M4,662.75. I shall refer to appellant and the two others as accused 1, 2 and 3 respectively.

When the charge was put to the three accused they pleaded guilty and the prosecution accepted such a plea and in terms of S. 240 of the Criminal Procedure and Evidence Act 1981, the prosecutor stated the facts as disclosed by the evidence in his possession and this was briefly as follows:

The three accused had planned to steal the money from Hlotse High School. Accused 3 worked at the school and had received an amount of money as stated earlier. Then while she was in her office, accused 1 entered and made away with the money. Accused 2 had been left by accused 1 in the car somewhere in town and accused 3 knew this fact. When she thought that accused 1 had reached the car, accused 3 came out of the office crying but her screams were somewhat impeded

/by a piece

by a piece of cloth put in her mouth. However, people heard her muffled cries. She was untied and she made a report.

It is not quite revealed how, but accused 3 made an explanation to the police as a result of which accused 1 was met and he produced a cash amount of M652.03. Similarly accused 2 produced a cash amount of M1,282.70. There were some charred papers which clearly showed they belonged to Hlotse High School. These were found at a spot pointed out by accused 2.

Accused 2 and 3 were said to be "husband" and wife. But how they are married, is not revealed. It is not very important as both pleaded guilty.

Within a short space of time only a quarter of the stolen cash money was recovered. The question is: What happened to the rest? The accused gained by their misdeed. This is worth pondering about when the question of sentence is being considered by our courts.

As the prosecutor rightly pointed out in his recorded address to the court, the crime was well-planned.

The prosecutor again requested a severe punishment to be meted out to the accused even though they were first offenders. The learned magistrate spoke of taking necessary measure to "eradicate" theft.

The learned magistrate, who is a magistrate of long experience not only in his district but in many other districts as well, knows the menace of theft of money from employers (be it government or not) and, in my view was perfectly entitled to take the fact of the prevalence of the particular crime with which the accused were charged, into consideration

(R. v. Boesigo, 1956(1) S.A. 234 at 237H). This is a crime which come before the courts daily.

The appeal is dismissed.

J U D G E.

For the 1st Appellant	:	Mr. Makhene
For the 2nd & 3rd Appellants	:	Mr. Modisane
For the Respondent	:	Mr. Khaue