

IN THE HIGH COURT OF LESOTHO

In the Appeal of :

LEROTHOLI POSHOLI

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 23rd September, 1982.

The appellant (hereinafter referred to as the accused) was charged with theft of money while employed by the Government in the Ministry of Posts and Telegraphs as a cage clerk at Mafeteng. The period covered by the charge is between the 1st May 1978 and 28th February 1979 and the amount involved is about M3,947.00 being the property or in the lawful possession of the Government. Accused pleaded not guilty but, after a very lengthy trial in which more than eighty witnesses testified for the Crown, he was found guilty and sentenced to undergo imprisonment for a period of three (3) years. He now appeals to this Court on conviction only.

The procedure which is followed when a registered letter is received at the post office was fully described by the Post-master (PW.87). After receiving several reports from some of the Crown witnesses he began his investigations. He also made enquiries from places of

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origin. On perusing form P10 (EXH.T1-29) he found that twenty-eight (28) registered letters had been received by the accused in his cage. These cover the period between July and November 1978. Incidentally letters registered Nos. 1218 from Stilgold and 00819 from Swartklip were among those subsequently found in the room occupied by the accused.

Det/Sgt Matamane searched the room occupied by the accused. He found registered envelopes (with no contents) under the accused's mattress. Among these he also found some empty express envelopes. He asked the accused to whom they belonged and he said they belonged to him. None of these envelopes were addressed to the accused.

On arrival at the Charge Office the accused's person was searched and some postal orders were found. The payee was one 'Mateboho A. Ntsinyi.

There was no dispute that the letters were found in the room occupied by the accused but the accused denied all knowledge of them. He said that twice previously he found the door of his room slightly opened on his arrival. Once he lost the key to his box in which he kept the registered letters overnight and that the Post-master PW. 37) found a key in his bunch of keys which opened the box. Subsequently he had found his lost key and returned that of the Post-master. He was not on good terms with the latter. These explanations were put to the Post-master who denied them. The stories of the door being found left ajar twice and the lost key and a key from a bunch of keys

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opening the box wherein registered mail was kept were news to the Post-master.

The crux of the argument before me by Mr. Gwentshe, on behalf of the accused is that the explanation of the accused may reasonable be true and although it need not be true For it to be rejected, it must be palpably false beyond reasonable doubt He further argues that the accused was not the only person who had access to that room. He then cited the two occasions when the door of the room was found ajar. He further stresses the animosity that existed between the accused and the Post-master. The accused concludes, so the argument goes, that the whole exercise of finding the registered envelopes in his room is staged to implicate him. The man who lived in that room previously, moreover, was not even called by the Crown to come and deny or admit that the registered envelopes were his or brought in by him As evidence later revealed this became quite unnecessary.

The simple inquiry is : what happened to the contents of the registered letters`

The Crown adduced evidence that the registered letters that were stolen had contained various sums of money. Evidence was adduced to show that certain registered envelopes which were subsequently found under a mattress in the room occupied solely by the accused had previously been received and signed for by the accused in the course of his normal duty He was solely responsible for the safekeeping of all registered letters The Crown's evidence therefore, is that the registered envelopes,

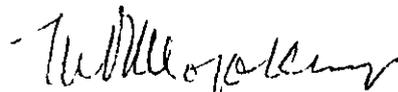
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together with their enclosures, disappeared in the hands of the accused. Moltseki Lepheane (PW 66) says : "On P10 dated 1/8/78 the accused appears as a receiver of a registered letter No. 1/232 from Odendaalsrust to Mafeteng Post Office It was received by the accused who signed for it and I countersigned " (See p 49 L 25 of the record). Anna Kekhotsofetse Mokhethi says : "P10 form issued at Maseru on the 2/8/78 item 38 was a registered letter No 2973 from Vierfontein to Mafeteng Post Office It was received on the 3/8/78 by the accused and I counter signed." (See p. 58 L 29) and "Item 31 on P10 form issued in Maseru on the 8/8/78 was a registered letter No 00118 from Western Levels to Mafeteng Post Office. It was received by the accused on the 9/8/78 and I countersigned " (P 59 L. 7) Clementina Maleka says "Item 9 which is registered letter No 1019 from Zuping was there during the checking After checking and affixing our signatures I left the accused in the cage and went to attend to my duties. Accused on that day was calling out members of the registered letters while I checked the numbers he was calling out on P10. I do not know what happened to a registered letter No. 1019 " (See p. 68 L 17-23) These same registered envelopes referred to by the witnesses, whom the learned Resident Magistrate believed, were subsequently found under a mattress used by the accused But accused counters this by saying that the finger should not point at him as Zondiga, an employee of the Post Office at Mafeteng and on interdiction also had access to the room

he, the accused, occupied. However, Tsitso Khabisi (PW.87) at p. 96) says. "Zondiga first came to fetch his property from the flat house in September 1979. From July 1978 to March 1979 Zondiga never came to the flat." The magistrate believed him and there is no reason why this Court should hold otherwise.

It has not been suggested that the learned Resident Magistrate misdirected himself in any manner whatsoever. Indeed, where he, the accused, was slightly placed at a disadvantage he decided in favour of the accused; an example is the confession which the Crown sought to have admitted; he doubted its admissibility. He did not hesitate to exercise that doubt in accused's favour. The patience that the learned Resident Magistrate displayed in listening to such lengthy, exhausting and sometimes tedious cross-examination is a wonder. In the final analysis the learned Resident Magistrate carefully went through this huge record and arrived at a conclusion which cannot, on the evidence, be faulted.

In the result the appeal is dismissed.


J U D G E.

For the Appellant : Adv. Gwentshe

For the Respondent : Adv. Khaue