

IN THE HIGH COURT OF LESOTHO

In the Appeal of :

MICHAEL MOLEFE Appellant

v

R E X Respondent

REASONS FOR JUDGMENT

Filed by the Hon. Mr Justice F.X. Rooney  
on the 6th day of October, 1982.

Appellant in Person  
Mr. Khaueo for the Crown.

On the 10th April, 1981, the appellant and another man, Lebohang Ntlaloe, were at the Holiday Inn Maseru. They had in their possession 11 uncut diamonds. These they sold for M2,500 to Lt. Bower (PW.1) of the South African Police. Both men had walked into a trap prepared for them in cooperation with the Lesotho Mounted Police. It was a commendable effort and the two accused were not induced or tempted to commit an offence but, were fairly and properly dealt with.

On the 14th September, 1981, they appeared before Mrs. Makoa charged with selling uncut diamonds in contravention of section 6 (1)(b) of the Precious Stones Order 1970. Both men pleaded not guilty, but, on the 15th January, 1982 they were convicted as charged. The magistrate fined the appellant M100 or 6 months imprisonment and Ntlaloe M150 or 10 months imprisonment. The uncut diamonds were forfeited to the State.

The appellant gave notice of appeal and on the 17th March, I directed that the appeal be set down for hearing and I further directed that the appellant be informed in writing that he will be required to show cause as to why (in the event of his appeal being dismissed) his sentence should not be enhanced. The appellant made no further effort to prosecute his appeal and on the 2nd August, I dismissed it on that account. However,

2/ I was not .....

I was not prepared to leave the matter in that unsatisfactory state. I made arrangements that the appellant and his companion Ntlaloe should appear before the Court and show cause as to why their sentences should not be increased.

It is provided by sec.6 (4) of the Precious Stones Order that any person who contravenes the provisions of sub-sec. (1) shall be guilty of an offence and liable on conviction to a fine not exceeding M10,000 or imprisonment for a period not exceeding 15 years or both such fine and such imprisonment. This is a clear indication of how seriously the legislature views the practice of dealing in uncut diamonds without authority. Those who engage in this illegal trade seek to enrich themselves at the expense of the economy as a whole. It must have been disheartening for the police officers who prepared the trap and arrested the two accused to learn that the trial magistrate considered the offence to be trivial in character and imposed small fines.

Both men appeared before this Court and the matter was finally disposed of on the 15th September.

The appellant Molefe is a first offender. He is married with children. He was formerly a teacher but is now running a small manufacturing business at Sebaboleng. He purchased the uncut diamonds and lost them in the trap. He paid his fine of M100.


I decided that in his case that justice demanded that it be brought home to him that illegal schemes to get rich quickly cannot be tolerated by the courts. His fine was increased to M1,000 with a sentence of 6 months' imprisonment in default of payment. As he is in business and others depend upon him, I made it possible that he could pay the additional M900 at the rate of M50 a month commencing on the 1st December, 1982. I directed that payment should be made to the Registrar of this Court.

3/ Although Ntlaloe .....

Although Ntlaloe did not appeal against his conviction or sentence, this Court is entitled to exercise its revisional powers to correct the inadequate sentence imposed upon him in the court below. Although the accused has not been in prison before this case, he has a criminal record which includes a conviction in 1977 for unlawful dealing in diamonds for which he was fined R100 or 5 months imprisonment in default. At the same time he was convicted of the unlawful possession of dagga and of a firearm. This gives the impression that he is a man who does not have any great respect for the law.

It is obvious that he came into this case because Molefe sought him out as a person engaged in the illicit diamond business who would be able (or so Molefe hoped) to find a customer. It was unfortunate that Ntlaloe's customer turned out to be the police.

Ntlaloe's legitimate occupation is that of a plasterer employed in the building trade. He said he earns about M5 or M6 per day worked and his wife has a job as a cleaner at the Hilton Hotel. After his conviction in January Ntlaloe spent a month in prison before he could arrange for the payment of his fine. Although, I view with seriousness the part he played in this matter, I was not inclined to send him back to prison. But, he must realise for the future that a considerable risk attaches to his illegal activities. I made an order that in addition to the fine that he paid Ntlaloe was sentenced to imprisonment for twelve months which sentence was wholly suspended for three years on the condition that he is not convicted of any offence under the Precious Stone Order 1970 committed during the period of the suspension.



F.X. ROONEY  
JUDGE