

IN THE HIGH COURT OF LESOTHO

In the Appeal of :

MOEKETSI MOKHOTHU

Appellant

v

R E X

Respondent

J U D G M E N T

Delivered by the Hon. Mr. Justice F.X. Rooney
on the 25th day of October, 1982.

Appellant in Person
Mr. Khaue for the Crown.

The appellant was convicted by Mrs. N.M. Mokuena of an offence contrary to section 90 (1) of the Road Traffic and Transport Order 1970, in that he failed to stop a motor vehicle before a robot which at that time indicated the colour yellow. (In fact the colour is amber).

The incident which gave rise to the court proceedings occurred on the 2nd December, 1981. Two police officers gave evidence and were vigorously cross examined by the appellant who appeared in person. Only the appellant gave evidence in his defence.

The record discloses a certain confusion in the mind of Sgt. Lephole (PW.1) as to the purpose of the amber sign. When he was asked what the distinction ~~between~~ the amber and red light was, he replied

"the yellow (amber) light instructs the cars faced with it to stop, but the red does not instruct anything as those cars are already stationary".

In response to further questioning Sgt. Lephole admitted that there were cars following that of the appellant. In re-examination, the prosecutor asked

the following question :

"What should happen if the traffic lights turn yellow (amber) while the car is already in the intersection?" The answer was "It's expected to go ahead".

The evidence of the second Crown witness, Trooper Masoabi did not contribute to a solution of the real issue before the court below.

In his evidence the appellant explained that when he was approaching the robots, the driver of a vehicle in front of him applied his brakes suddenly and so much so that he had to swerve to avoid the danger of running into him. The appellant pointed out that the car immediately behind him might have collided with his car if he did not proceed to cross in the face of the amber robot.

Cross-examined by the prosecutor, he explained the failure to stop at the cross line in the following terms

"Because I would block oncoming traffic and further because the traffic light was yellow (amber) and it allowed me to go ahead."

It was put to the appellant that it was wrong to go against the amber light to which the appellant replied.

"I was right because I avoided the collision which could have occurred."

There were more questions directed to the same point expressed in different ways, but, as will be seen the appellant was correct if he considered it unsafe to stop at the robot having regard to the traffic behind him.

The magistrate set out in a written statement the facts found to be proved and her reasons for convicting the appellant. In the course of this document, she examined the testimony of the witnesses and she quoted portion of Regulation 168(i) of the Road Traffic and Transport (Amendment) No.2 1978. She also went to the trouble to quote extracts from a book on the law of Collisions by Isaac Leveson.

In common with the prosecutor and the police witnesses the magistrate failed to pay due regard to the proviso to Regulation 168 (1) which reads

"Provided that if the vehicle is so close to the stop line when amber appears after green that the stop cannot be made safely, the driver may proceed cautiously against such amber indication".

Having regard to the evidence in this case, the proviso was all important. Before the appellant could be properly convicted the prosecution had to prove that the proviso did not apply. It was a misdirection on the part of the magistrate to have considered the evidence without regard to the proviso. She did not apply her mind to the question as to whether the appellant could have stopped at the cross line without danger to any other vehicle approaching the robots.

The incident complained of took place at 7.30 a.m. on a working day and there was plenty of traffic in the vicinity. The appellant's explanation as to why he crossed while the light showed amber may well have been true and consequently he was entitled to be given the benefit of the doubt.

This appeal is allowed and the conviction and sentence are set aside.



F.X. ROONEY

JUDGE

25th October, 1982.

Attorney for the Respondent: Law Office.