

IN THE HIGH COURT OF LESOTHO

In the matter of :

DAVID LELINGOANA

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 5th day of November, 1982.

The appellant was charged before the subordinate court held at Qacha's Nek facing a multitude of thirty-five (35) counts of theft by false pretences. He pleaded not guilty but was, at the end of the day, found guilty on all of them and sentenced as follows :

- (a) "Counts 1 - 15 one year imprisonment each count. To run concurrently."
- (b) "The remaining counts (i.e. from 16 - 35) one year imprisonment on each count, to run concurrently."

Half these sentences was suspended for a period of three years on certain conditions.

The acts complained of in this matter were all committed during the period 1st April 1981 to 29th May 1981 it being commonly alleged that the appellant misrepresented to the several persons mentioned in the respective counts that he was a representative of the Principal Chief of Qacha's Nek (P.W.2) and had been authorised by him to impose and receive fines of cash and for small stock from persons who had failed

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to remove their animals' from certain reserved grazing area.

The Principal Chief of Qacha's Nek gave evidence and denied that he ever authorised the appellant to act, as he did. He said : "I never met him (appellant) during April and March 1981. I gave him no orders."

Mr. Moeti Letseka, an officer in the Department of Agriculture, Qacha's Nek gave evidence to the effect that the penalties or fines to be imposed in the circumstances described above are fifty lisente (50L.) per head for small stock. He never heard of a situation where a man involved in grazing the pastures pays fines of animals. He, the witness assists chiefs in this work. I will go further and say that he finds support from Legal Notice No. 39 of 1980: Range Management and Grazing Control Regulations published in Gazette No. 36 of 10th October, 1980 (Supplement No. 4). Section 6(3) in part :

"S. 6(3)

~~The owner or possessor of stock found grazing in contravention of Leboella restrictions shall be liable to a fine of M0.50 for each head of large stock, M0.25 for each head of small stock and shall pay pound fees at the rate of M0.10 per head of large stock and M0.05 per head of small stock per day or part thereof."~~

Upon payment the chief shall release such stock to the owner or possessor (S. 6(4)). Now S. 6(2) read as follows:

"6(2)

A chief may assign to any person living in his area of jurisdiction the duty of impounding stock trespassing on leboella."

The appellant claimed that the Principal Chief had assigned him the duty of impounding the stock of the various complainants. He did not say to them he was acting purely in his capacity as a chief. He lied to them. Contrary to the Regulations he made them pay he-goats, rams, sheep exorbitant sums of money

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(some as much as M70.00). It was quite obvious to me that he acted in concert with the men who did the actual questioning because whenever an argument immediately followed, (as it invariably happened), appellant would always make his appearance and tell his subjects that they must do as they were told as he was acting on the authority of the Principal Chief. He used his influence and that of his senior chief in order to mild his people of their possessions. In one or two instances the animals taken as a fine were slaughtered and roasted! To demonstrate the appellant's common purpose with his men Khataeo Thonkha (P.W.11) says: "When he arrived, chief (accused) asked Ranketsi (one of his henchmen) whether they made any progress. They said there was opposition so that there was no progress. The chief talked to our Headman Khahliso and said: 'talk well to these messengers of mine,' he meant Ranketsi and Khoanyane. We were satisfied when the chief talked, he even said the order was from the Principal Chief Makotoko Theko Makhaola."

When he realised that his despicable game had been seen for what it was, he handed over to major Chaka (P.W.7) a sum of M1,270.00. In my view this was closing the stables after the damage is done.

I have carefully read the record of the case and it is very difficult to make out which counts have been proved and which have not; perhaps that is the reason for the strange global sentences imposed by the learned magistrate. Public Prosecutors must be encouraged to say at least in respect of which count(s) a particular witness is being led in evidence. This method was not followed and the result is that no evidence was led in respect of the following counts : 5, 6, 7, 8, 13, 16, 18, 19, 29, 30, 31, 32, 33, 34 and I found count 35 rather vague and embarrassing since it speaks of "sundry unspecified

persons who were cheated of monies all amounting to M275." Although the appellant was legally represented there was no voice of protest against such a charge nor were particulars requested to clarify the position before the accused pleaded. There had been an objection but it related to something different namely that the charge sheet was now different as it contained more counts. No self-respecting court can allow a charge of this nature to stand especially if there is no evidence sufficiently clarifying it.

In my view, the conviction on counts 1, 2, 3, 4, 9, 10, 11, 12, 14, 15, 17, 20, 21, 22, 23, 24, 25, 26, 27, 28 is confirmed, but the sentence imposed by the learned magistrate is set aside. There was an appeal against sentence on the ground that it was excessive. In my view, it was extremely lenient. The appellant is a chief. He has abused his privileged position - a position held in reverence or high esteem by the Basotho people. The Ministry dealing with Chieftainship Affairs is still going to take disciplinary action against him. In consideration sentence also this Court cannot close its eyes to the fact that the matter has been before the courts since early this year, and the long period which has elapsed since will have a profound effect on the sentence to be imposed. (See Pieter Makoala v Regina, 1963-66 H.C.T.L.R. 64 at pp. 65D - 66A). The humiliation already being suffered by the appearance of the appellant in various courts in the eyes of his subjects who once loved and trusted him can be described and felt by nobody else except himself. However, he cannot be let off scotfree. Otherwise the law, in our community will lose respect. Those who transgress the law must be punished although the form of punishment may take different forms depending on the particular circumstances of each case and the personal circumstances of each individual.

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But all are equal before the law.

The sentence on counts 1, 2, ~~3~~, 4, 9, 10, 11, 12, 14, 15, 17, 20, 21, 22, 23, 24, 26, 27 and 28 is one year each to run concurrently, the whole of which is suspended for a period of two years on condition that during the period of the said suspension he is not convicted of an offence involving dishonesty.

The sentence on counts 3 and 25 is a period of two years' imprisonment on each count. Half the sentence is suspended for a period of two (2) years on condition that during the period of the said suspension he is not convicted of an offence involving dishonesty. I single these two counts because he extracted M65.00 and M70 from Seotsa Sethuntsa (P.W.16) and Tsabo Mangange (P.W.25) respectively. Very distressing indeed when remembers the economic circumstances of the complainants.

This was not a particularly an interesting record to read. It was too depressing. The Registrar is requested to forward a copy of this judgment to the Ministry of Chieftainship Affairs.

I wish to express my sincere thanks to both counsel for the thorough manner in which they presented their arguments. They certainly made the task of this Court much easier in preparation of this judgment.

J U D G E.

5th November, 1982.

For Appellant : Adv. Makhene

For Respondent : Adv. Peete.