

IN THE HIGH COURT OF LESOTHO

In the Application of .

JOHN JESUS VIVIEROS

Applicant

v

R E X

Respondent

REASONS FOR JUDGMENT

Filed by the Hon. Chief Justice, Mr. Justice T.S.
Cotran on the 15th day of November, 1982

This is an application to the High Court to review criminal proceedings and order a "new trial" or alternatively "to direct the trial magistrate to hear a plea in mitigation" by an accused person sentenced to six months imprisonment without the option of a fine imposed upon him by a magistrate in Maseru for the offence of failure to stop immediately after accident in which a person dies or is injured contrary to s.122(1)(a) read with ss 2(a) of the Road Traffic and Transport Order 1970, and or alternatively an appeal against the substantive sentence of imprisonment.

On 8th November 1982 I varied the sentence to a fine of 1500 or to 6 months imprisonment in default of payment.

I said reasons will be given later and these now follow.

The applicant/appellant was represented at the trial by Mr. attorney Masoabi. The applicant/appellant says he instructed his attorney in effect to plead not guilty because he had told him that he was not aware that he had hit a pedestrian. Mr. Masoabi denies this in an affidavit he has filed at the instance of Crown counsel. The fact of the matter is that the record shows that charge was read to the applicant/appellant and the plea of guilty came from his mouth and not Mr. Masoabi's. What happened between client and attorney before cannot be subject to further enquiry unless it is demonstrated that Mr. Masoabi had acted fraudulently.

