

IN THE HIGH COURT OF LESOTHO

In the matter of

R E X

v

NTSANE PELEHA

S E N T E N C E

Delivered by the Hon. Mr. Justice M.P. Mofokeng
on the 14th day of December, 1983.

The accused was charged before the Subordinate Court at Teyateyaneng with the crime of Housebreaking with intent to steal and theft. In view of the conclusion the Court has arrived at, it is not necessary to give the details of thereof. .

The accused, at the conclusion of all the evidence, was found guilty "as charged." The public prosecutor then handed into Court the accused's previous convictions who admitted "all previous convictions as stated." Unfortunately these were omitted to be placed before this Court nor are any copies (photocopies or any) attached to the judge's record. The record further states:

"Following a record of previous convictions and more especially similar ones to the crimes charged namely:

1. Housebreaking with intent to steal and theft (three counts).

/2. Theft

2. Theft common.

The accused is committed for sentence by the High Court of Lesotho."

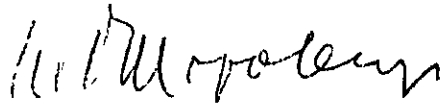
It is not clear why the accused has been committed to this Court for sentence. It is not clear whether he had been charged on one charge sheet with three (3) different counts of housebreaking with intent to steal and theft or whether it is meant he had been charged on three different occasions with the said crimes. As to what the nature of sentences passed on the accused were, this Court is totally in the dark.

In terms of section 293 (1) of the Criminal Procedure & Evidence Act 1981 it is clearly stated that if a magistrate is of the opinion that a greater punishment ought to be inflicted for the offence than he has the power to do so, he must give his reasons in writing on the record of the case. It cannot be a reason of bringing a case to this Court for sentence under this section solely because the accused has previous convictions. If it were so, full information must be furnished to this Court, including his reasons for sending the case here. (See Magaphalla & Another v Rex, 1971-73 L.L.R. 39 at 40C). This machinery, if I may call it, was devised for the simple reason that there should be no passing of the buck but only well documented and reasoned cases should be referred to this Court for sentence. (See Rex v Motlalepula Letsapo, 1980 (2) L.L.R. 434 at 436).

There has been no compliance with the provisions of

/section

section 293 (1) of C.P. & E. (supra) and what should have formed part of record has not. The whole record is a clear manifestation of total disregard of the decisions of this Court to which I have referred. In the circumstances I have no alternative but to refuse to deal with this matter and return back to whence it came, and it is accordingly so ordered.



J U D G E.

14th December, 1983.

For the Crown : Mr. Pitso

For the Defence: In Person.