

IN THE HIGH COURT OF LESOTHO

In the Appeal of :

MOHOSHELA MOHOSHELA

Appellant

v

REX

Respondent

J U D G M E N T

Filed by the Hon. Chief Justice, Mr. Justice T.S.
Cotran on the 25th day of March 1983

I had reserved Judgment on 7th March, allowed continuation of the appellant's bail, and told him he will be notified of the result in due course.

The appellant, a teacher at Sehonghong Secondary School in the district of Qacha's Nek, was convicted of theft of a registered article containing a Lesotho Government salary cheque for M166.98 made out in the name of M. Ndumo, a lady teacher in the same school and wife of the manager. The cheque was from the Food Management Unit (with Headquarters at Maseru) and represented her salary when she was working at the Unit some time before. The Unit held the receipt (issued by the Maseru Post Office) for the registered letter (Exhibit B).

The prosecution have been able to prove that the registered letter containing the cheque reached its destination at Sehonghong Post Office on or about the 26th November 1980. The Post Office made out a slip in M. Ndumo's name and address (Exhibit A).

The registered article was collected from the Post Office not by M. Ndumo but by another teacher at the same school, one Maqacha Motlomelo, who signed the slip in her own first name Maqacha "for M. Ndumo". The Post Office handed her the registered letter because the postal clerk knew that both worked in the same school, and he assumed that Maqacha

/Motlomelo

Motlomelo would hand it over to her colleague.

The appellant presented the cheque, now endorsed M.Ndomo, to the manager of a shop at Matabeng on the 9th December 1980. The manager of the shop knew that the appellant was a colleague of Mr and Mrs M. Ndumo at the same school and assumed that Mrs. Ndumo had endorsed the cheque and authorised the appellant to cash it on her behalf. The shop manager took the cheque, paid out its value to the appellant, entered it in his books, and eventually banked it (Exhibit D).

The above described operation was not discovered until towards the end of January 1981 when Mrs. Ndumo's husband (Mr. A.T. Ndumo PW2) caused enquiries to be made from his wife's previous employers at Maseru, Post Office at Sehonghong, and the Bank where the cheque was eventually traced.

Maqacha Motlomelo and the appellant were prosecuted together but not until 2nd September 1982 and the trial was not completed until the 10th November 1982. Maqacha was represented at the trial by Mr. Makhene, an advocate, but the appellant appeared in person. Maqacha and the appellant were 1st and 2nd accused respectively. They were both convicted. Maqacha was fined M80 or 4 months imprisonment in default the whole suspended on conditions, and the appellant was fined M100 or 5 months imprisonment in default, half of which sentence was suspended on conditions.

Maqacha had testified in her defence that it was the practice for any teacher to collect all mail addressed to the school and she did collect and had signed for Mrs. Ndumo's registered article. There was other mail apart from the registered article and she asked the postal clerk to bundle them together and tie them up which he did. She went back to the school manager's office (he is Mrs Ndumo's husband) and dumped the mail on his desk. He himself was not there at the time but there appears to have been two other teachers at the office. The appellant was not one of them. Her defence, in effect, was that she had nothing to do with the theft of the article from the manager's office or with the subsequent encashment of the cheque. The appellant did not cross examine her.

It will immediately be seen that her story could have been reasonably possibly true. Firstly if the practice that

any teacher could collect mail did not exist the postal authorities were unlikely to have handed her a registered letter addressed to somebody else. Secondly there is an inference that having endorsed the receipt slip (Exhibit A) in her name on behalf of the addressee that at that stage at any rate she had no sinister intent towards the registered article and its possible contents. She may of course have formed an intent to steal it later. In order to convict Magacha the magistrate should have been satisfied that her explanation was false beyond reasonable doubt and he came to such a conclusion from the fact that Mrs. Ndumo gave her no authority to collect, from the fact that Magacha did not inform Mrs. Ndumo that she had a registered letter amongst the mail she had collected on that day, from her demeanour in the box, and because her counsel did not put in cross examination questions to the Crown witnesses particularly the manager of the school and his wife that would have brought that defence up. He concluded therefore that Magacha was a liar on this matter. These are of course good and valid points but I discern a nagging doubt in the magistrate's mind because he goes on to say and I quote :

"there was nothing to prove the innocence of accused 1...."

If by this he meant that an onus falls on Magacha to prove her innocence it is clearly a serious misdirection, but if he had meant that the factors enumerated above do not show innocence then serious misdirection there may not have been.

The difficulty the magistrate found is the lack of evidence to connect Magacha's original receipt of the registered article with the eventual encashment of its contents by the appellant at the shop. With respect, I see no difficulty. Only one of two things could have happened :-

1. That Magacha and the appellant had acted in concert after she got the registered letter and were therefore both guilty or
2. That the appellant acted alone or with someone else.

The appellant's defence was a complete denial that he cashed the cheque (this was rejected) but raised the point before the magistrate, as he did before me, that the particulars of the charge had stated that he stole the registered article which contained the cheque and since there was no evidence connecting him with theft of the registered

/article

article, he could not therefore be convicted of theft of the article and as a corollary the cheque. In my opinion the argument is a non-sequitor.

Maqacha may have stolen the envelope, opened it, got Mrs. Ndumo's cheque and gave it to the appellant to cash. She or he may have endorsed it. That is certainly a possibility, a strong possibility, which the magistrate accepted in convicting her on the grounds earlier stated. I think he ought to have given her the benefit of the doubt but she has not appealed and it is not the kind of flagrant and unreasonable conviction to warrant invoking my powers (which I do possess) to quash a conviction even when no appeal is noted.

But there is no doubt whatsoever about the appellant's guilt of stealing the value of the cheque whether or not he also stole the registered envelope containing it, either from the manager's desk as Maqacha implies may have happened, or if she(or anyone else for that matter) had given it to him.

The charge sheet was certainly not fatally defective and whatever minor defect may have existed has been cured by the infallible evidence of the appellant's act in cashing the cheque.

I would dismiss the appeal against conviction.

When I read the appeal record in January I instructed the Registrar to inform the appellant that he will be required to show cause during the hearing why his sentence should not be enhanced or varied. His effective sentence is a fine of M50 a sum so paltry as to cause a sense of shock. The appellant is an intelligent man entrusted with the education of our youth and should set an example to them, be loyal to the State that employes him, and also of course to his own colleagues at the school. He has betrayed them all, caused loss to the tax payer and perhaps gross inconvenience and expense to the colleague who was deprived of the fruits of her labour until she was reimbursed if yet at all.

The sentence giving him the option of a fine is quashed. He will go to prison for five months half of which sentence will be suspended on the following conditions.

1. That he be not convicted of an offence involving

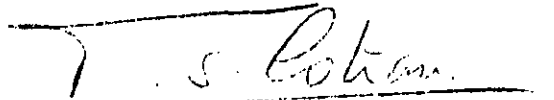
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dishonesty for a period of one year from today.

2. That he will refund to Lesotho Government immediately the sum of M166.98 assuming Government have reimbursed Mrs. Ndumo for the loss of her cheque or Mrs. Ndumo directly if Government have not in fact made any reimbursement.

Will the Registrar please send a copy of this Judgment to each of

- (a) the trial magistrate or the magistrate currently in charge of Qacha's Nek district, to cause the appellant to be apprehended, read to him the appeal Judgment, and then commit him to serve his sentence.
- (b) The Teaching Service Board of the Ministry of Education
- (c) The Director of Public Prosecutions
- (d) The Solicitor General who is empowered, if the appellant elects not to repay, to obtain a civil Judgment against the appellant and then execute on his property.



CHIEF JUSTICE
25th March, 1983

For Appellant : In Person
For Respondent: Mr. Peete