Hon. Mofokeng J.

CRI/A/30/83

IN THE HIGH COURT OF LESOTHO

In the Appeal of:

MOSHATI MORAKABI Appellant

v

R E X Respondent

J U D G M E N T

Filed by the Hon. Mr. Justice B.K. Molai
on the 22nd day of April, 1983.

I have read through the proceedings in this appeal and in exersice of the powers vested on me under the provisions of s. 327 of the Criminal Procedure and Evidence Act 1981 dismissed the appeal summarily.

The appellant was charged before the subordinate court of Mohale's Hoek with contravention of s.3(a) of Dangerous Medicines Act No. 21 of 1973, it being alleged that on 21st January, 1983 and at Ha Lekhema in the district of Mohale's Hoek he unlawfully and intentionally dealt in 2520 kg of dagga without permit.

The appellant pleaded guilty to the charge and the prosecution accepted the plea when the provisions of s. 240(1)(b) of the Criminal Procedure and Evidence Act, supra, were invoked.

The facts, and these were admitted as correct by the appellant, disclosed that following certain information, the police proceeded to appellant's home at Ha Lekhema in the district of Mohale's Hoek on 21st January, 1983. Appellant's house was searched in his presence and that of his chief. In the course of the search dagga was found. A permit authorising him to be in possession of the dagga was demanded from the appellant who failed to produce any. The dagga was taken possession of and subsequently weighed in the presence of the appellant.

2/ It was found .....

It was found to weigh 2520 kg. The appellant was cautioned and charged.

On these facts the trial magistrate convicted the appellant as charged. I have no quarrel with this conviction.

In mitigation, the appellant who was a first offender asked for "an option of a fine." However, for purposes of sentence, the magistrate took also into account the quantity of dagga found in appellant's possession and the fact that the kind of offence with which the appellant had been convicted was prevelant not only in his district but throughout the entire country. There was therefore the need for a deterrant sentence and to that end he considered a sentence of 12 months imprisonment appropriate. The appellant was accordingly sentenced.

It is against this sentence that the appeal is noted to this Court on the ground that it is excessive and induces a sense of shock having regard to the following factors:

(a) appellant is a first offender.
(b) the appellant has pleaded guilty.
(c) the small quantity of dagga found in possession of the appellant.

In Motsekae Motjolobela v. Regina 1955 H.C.T.L.R. 19 at p. 20, Harragain, J.A. set out the principles which guide an Appeal Court when considering an appeal against sentence as follows:

"1. Would a reasonable man have awarded such a sentence.
2. Are there any circumstances bearing upon the matter which the trial court has failed to consider.
3. Did the trial court follow a wrong principle in imposing the sentence.
4. Did the trial court exceed its powers."

In the instant case the trial was before a magistrate with First Class Powers. In terms of s. 62(b) of the Subordinate Courts Proclamation No. 58 of 1938 (as amended) his criminal jurisdiction is 2 years imprisonment. Indeed, s.3(d)(i) of the Dangerous Medicines Act No. 21 of 1973 seems to empower him to impose even a more severe sentence. It reads:

3/ "3. Notwithstanding ...

"3. Notwithstanding anything to the contrary in any other law contained, any person -

.....

.....

(d) who has in his possession or uses any medicine or plant referred to in paragraph (c) shall be guilty of an offence and liable on conviction -

(i) in the case of a first conviction for a contravention of any provision of paragraph (a) or (c), to a fine not exceeding one thousand rand or to imprisonment for a period not exceeding three years or to both such fine and imprisonment;

The trial magistrate has imposed a sentence of 12 months imprisonment. He cannot therefore be said to have exceeded the powers conferred upon him by the legislation. It is apparent from a careful reading of the proceedings the the trial magistrate was very much alive to the factors on which the appellant relies for his contention that the sentence is severe and induces a sense of shock.

Nonetheless, he considered that the prevelance of the offence against which he had convicted the appellant called for a real deterrant sentence if only the repetition of that offence were to be brought under a check. He concluded therefore that a sentence of 12 months imprisonment was appropriate and the appellant was accordingly sentenced.

I can find no fault with the principle followed by the learned magistrate in sentencing the appellant. If anything the sentence sins on the side of leniency regard being had to the type of offence with which the appellant had been convicted and the quantity of dagga in which he was dealing.

In the result I come to the conclusion that there is no substance in this appeal which I accordingly dismiss summarily.

B.K. MOLAI

Judge

22nd April 1983.

For Appellant : No Appearance
For Respondent: No Appearance.