

IN THE HIGH COURT OF LESOTHO

In the appeal of :

'MAMAKUTOANE REGINA MAKUTOANE

Appellant

v

R E X

Respondent

REASONS FOR JUDGMENT

Filed by the Hon. Mr. Justice B.K. Molai on
the 27th day of April, 1983.

On 25th April, 1983, I dismissed this appeal and intimated that reasons for my decision would be filed later. These now follow.

The appellant appeared before the Subordinate Court of Mafeteng charged with the crime of theft on the following allegations:

"Whereas at all relevant times the said accused was employed by the Lesotho Government in the Ministry of Justice, at Ramokoatsi Central Court, and was as such a servant or agent of the said Lesotho Government at the said Ramokoatsi Central Court, and entrusted with the custody and care of money which belonged to her said employer or which money came to her possession on account of her employment, the said accused did during the periods of 1st, and 7th September, 1982, and at or near the said Ramokoatsi Central Court, in the district of Mafeteng, unlawfully and intentionally steal some of the said moneys, thereby creating a general deficiency of M30 the property or in the lawful possession of the Lesotho Government."

The appellant pleaded guilty to this charge and the prosecutor accepted her plea. The provisions of s.240(1) (b) of the Criminal Procedure and Evidence Act 1981 were invoked.

The facts, and these were admitted as correct by the appellant, disclosed that at all material times, the appellant was a Lesotho Government employee in the Ministry of Justice deployed as court clerk at Ramokoatsi Central Court. As such one of her responsibilities was to receive court moneys which included compensations.

During September, 1982, the defendant in a certain civil case (Mapiose Letlala v. Lekhotla Tsula) before Ramokoatsi Central Court was ordered to pay M300 as compensation to the plaintiff. The compensation money was to be paid in instalments.

On 1st September, 1982, the defendant who was illiterate called at the appellant's office at Ramokoatsi Central Court and in terms of the court order paid M60 as part payment of the compensation. The appellant received the M60 but issued an acknowledgement receipt for only M30. She then told the defendant to go and inform the plaintiff that she could come and collect the part payment that had been paid in. On 8th September, 1982, plaintiff accordingly came to accused's office to collect the money that had been paid by the defendant and the appellant paid her M30.00.

The Court President of Ramokoatsi Central Court who happened to be in the office of the appellant at the time noticed that transaction and immediately pointed out to both the appellant and the plaintiff that in terms of the court order the latter was to be paid M60 and not only M30. The appellant then explained that she had already used the other M30. She at the same time asked for permission to go to her bank from where she could obtain another M30 with which to pay the plaintiff. The permission was granted but when the appellant did not return from the bank, the Court President referred the plaintiff to the magistrate in-charge of the district. The district magistrate reported the matter to the police.

3/ On the morning ..

On the morning of 9th September, 1982, the Plaintiff, the Court President and the Appellant appeared before the district magistrate. The appellant again conceded to have used the M30.00 which she was prepared to refund. Plaintiff made noise and demanded immediate payment of her money and on the instructions of the district magistrate, the appellant had to make immediate refund of the M30.00. The appellant was however, subsequently cautioned and charged by the police.

On these facts, the trial magistrate returned a verdict of guilty as charged. I find no fault with this decision.

After the appellant who was a first offender had addressed the court in mitigation, a sentence of 4 months imprisonment was imposed. The appeal was against this sentence on the grounds that it was "too harsh and so grossly excessive that it induces a sense of shock" and the trial court did not consider mitigating factors in favour of the appellant.

I must say, in the circumstances of this case, the sentence of 4 months imprisonment imposed by the trial magistrate did not give me a sense of shock at all. On the contrary I considered it to be too lenient. The appellant misused her position of trust and took unfair advantage over illiterate members of the public to whom she had an obligation to render faithful and honest service. The type of crime with which the appellant had been convicted is unfortunately too prevalent in this country and seems to be going on and on unchecked notwithstanding all efforts of the courts of law to stamp it out. I set aside the sentence of 4 months imprisonment passed by the trial magistrate and substituted therefor 12 months imprisonment.

However, I was told during arguments that the appellant who was in her advanced stage of pregnancy at the conclusion of her trial and had since been on bail pending appeal had

4/ given birth

given birth to a baby three weeks ago. Only for the sake of that baby I was prepared to suspend the 12 months imprisonment for 3 years on condition that the appellant was not convicted of any offence involving dishonesty during the period of suspension.

As has been mentioned earlier the appeal was dismissed.


B.K. MOLAI
JUDGE

27th April, 1983.

For Appellant : Mr. Khaue,
For the Crown : Miss Surtie.