CRI/A/86/82

IN THE HIGH COURT OF LESOTHO

In the Appeal of :

PETER MOLAI Appellant

v

REX Respondent

REASONS FOR JUDGMENT

Filed by the Hon. Chief Justice, Mr. Justice T.S.Cotran on the 9th day of February, 1983

Late noting of this appeal is hereby condoned.

The appeal has been allowed on 7th February 1983 and my reasons follow :

The appellant, who purported to have pleaded guilty to the unlawful possession of dagga c/o to s. 3(b) of the Dangerous Medicines Act 1973, was found guilty as charged and fined M5 or 5 days imprisonment in default by a Class III magistrate sitting at Leribe. He paid the fine. The Resident Magistrate who reviewed the case (Mr.Mophethe) thought the conviction and sentence were in accordance with real and substantial justice, but in terms of s.26(1) of the Act he ordered the appellant's vehicle on which the dagga was found to be forfeited to the Crown. The trial magistrate did not make this order although it is mandatory. The appellant found this out after time for the appeal had elapsed because the police refused to release the vehicle until the appellant proved ownership and this took him some time.

The appellant was unrepresented.

The facts as outlined by the public prosecutor reveal that the appellant, who was driving a Mazda van, was stopped, as were other vehicles, by a police road block. His vehicle was searched. Near the driver's seat the police found one seed of dagga. The police officer (whose means of knowledge of the substance or his experience in recognising the substance was not mentioned) showed him the seed and the appellant made an explanation. What explanation he made has not been disclosed

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but the prosecutor boldly told the magistrate that "the Crown evidence would show that the seed belongs to the accused". The public prosecutor admitted however that the appellant "operated" the van by which expression I take him to mean that he, the appellant, was not invariably the only person in the world who could have been, at one time or another, inside this vehicle. A passenger, a family member, or a friend, could also have been on it.

The magistrate found "as a fact" that the appellant "knew" about the presence of the dagga seed and that he "knew" it was dagga. There is not a scintilla of evidence of that aspect in the prosecutor's "outline of the facts" and is a supposition which is quite untenable.

The appellant in the grounds of appeal (drawn by himself) says he never knew the seed was in his vehicle though it is a fact that it was found in it. He further adds that he carries goods for the public and had no idea how this seed came to be in the floor of the cabin of the van. Indeed a gust of wind could have blown it into the van.

I am convinced that no offence whatsoever has been disclosed on the facts as outlined. (See R. v. Monyane 1980(2) LLR 309 at 311). The magistrate should have entered a plea of Not Guilty and proceeded with the trial. The appellant could be convicted only if there was evidence, direct or circumstantial, as would have proved beyond reasonable doubt that he knew both of the existence of the seed and its nature.

Mr. Peete for the Crown does not support the conviction but his submission is that the Act does make a distinction on quantity (s.30(1)(a)) and that possession of one seed is too trivial and brings the maxim de minimis non curet lex into operation.

I prefer to allow the appeal on the ground mentioned earlier. I can envisage circumstances where possession of one seed may not be de minimis.

The conviction sentence and order were accordingly set aside. The fine was ordered to be refunded to the appellant and his vehicle released to him. The appeal fee should also be refunded.

CHIEF JUSTICE
9th February, 1983

For Appellant: Adv.G.N.Mofolo
For Respondent: Mr. Peete