

IN THE HIGH COURT OF LESOTHO

In the Appeal of :

LESHOBORO MAJARA

Appellant

v

REX

Respondent

J U D G M E N T

Delivered by the Hon. Chief Justice, Mr. Justice  
T.S. Cotran on the 21st day of February, 1983

The appellant was found guilty by a Class III Magistrate sitting at TY of contravening s. 21 of the Internal Security (General) Act 1967. He was fined M50 or 5 months imprisonment in default of payment suspended on conditions for a period of one year. Section 21 of the Act provides :

"A person who uses obscene, abusive, threatening or insulting language, or swears, shouts, screams or otherwise conducts himself in a manner that give or is likely to give such provocation to any person as to cause such person to break the peace or to commit any offence against the person, is guilty of an offence and liable on conviction to the penalty prescribed in sections 34 and 35."  
(My emphasis)

The particulars of the charge read as follows :

"That the said accused did wrongfully, unlawfully and intentionally use obscene abusive threatening or insulting language or otherwise conduct himself in a manner to provoke or cause a breach of the peace or commit an offence to wit by saying to Captain Mosoeunyane, Warrant Officer Ntoi, D/Sgt Khobatha and other members of the Police Force "Ho ntse ho thoe mapolesa a teng Teyateyaneng mosima 'mabona baa ba ntse ba ahlame Teyateyaneng koana rota tsee" and thus contravene the above section".

The Sesotho words appearing in the particulars have been translated or rather transliterated by a court interpreter as follows :

/"I have

"I have long been here guarding this vehicle and I was told that there are police at TY their mothers' rectums; see these automatic urinators; let us go away men".

It is common cause that "mothers' rectums" (or mothers' vaginas) are abusive and insulting words. "Automatic urinator" is a person who prefers to urinate in his bed at night, not involuntarily because of illness or disease, but because the person is too lazy to get up to do so. Mr. Maqutu says these are not abusive or insulting words but submits are used to convey to a person that he is a "late comer" or "idle" or "indisciplined". In plain English the words used could be something like this:

"f.... your mothers we have been waiting for you to take action for a long time and instead you are sitting on your arses (or your bums) doing nothing".

With respect to Mr. Maqutu's argument I think the words are abusive and insulting.

The incident arose from the following facts which were common cause.

The appellant (aged 68) is the Principal Chief of Berea (for 35 years), member of the Lands Tribunal, a member of the Interim National Assembly and had had a very long career of service to the country from well before Independence when he was adviser to the then Regent, during Independence, and since.

On the 4th April 1982 he was informed by one of his subjects that a vehicle, owner untraced and unknown, was found abandoned near Maqhaka (within the Principal Chief's domain close to the Maseru/TY tarmac road) and that the vehicle contained explosives. The appellant chief gathered some men, proceeded to the scene, and stood guard over the vehicle pending the arrival of the police of TY to whom a message had been sent either by a courier, or with a policeman in a vehicle who happened to be on his way to TY, or both. This was on the morning of the 4th between 7 and 8.

Maqhaka is some 25 Km from TY but some 15 Km from Maseru. However, administratively, Maqhaka falls within TY police jurisdiction and reports of suspected crimes are passed as a matter of routine to TY police and this is what the appellant did.

The appellant waited with his men for rather a long time, estimated at between 2½ to 3 hours, but there was no help forthcoming from the TY police.

The appellant then proceeded in his own private vehicle to inform the Maseru police. Having reached Maseru he encountered bureaucracy. The initial reaction of the Maseru police was that it was a TY police job, not the Maseru police job. Undaunted the appellant chief went to the top and managed to convince a senior police officer (Lt. Col. Sehloho PW3) that action ought to be taken immediately. Col. Sehloho and some police officers, in company of the appellant chief, then drove back to Maqhaka. The Maseru police had just started investigating when the TY police, under the command of Captain Mosoeunyane (PW1) pitched up. The appellant chief addressing the TY police then uttered the words complained of. Captain Mosoeunyane of TY police was annoyed and did exhibit this annoyance but Col. Sehloho ordered the appellant chief to calm down and the matter ended there with anger on both sides but nothing more.

In his evidence Captain Mosoeunyane who caused the summons to be issued against the appellant says that he was provoked and "nearly replied and fought him".

W/O Ntoi(PW2) also of the TY police testifies that he was provoked and "nearly fought" the appellant at the time he was insulted.

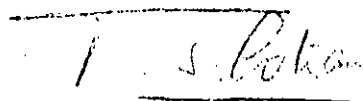
The particulars of the charge read that the appellant used the abusive words "intentionally wrongfully and unlawfully" I see no evidence of mens rea or intent to insult or to provoke breach of the peace. However on reading the relevant section of the Act it seems to me that this is not an essential ingredient of the offence. Section 21 of the Lesotho Act however uses different words from the corresponding South African legislation on the subject. See Hunt (Milton & Fuller) South African Criminal Law and Procedure (Vol II 1971 edition, page 154 et seq). The Lesotho text says that the words used by the person must actually (not merely potentially) cause the aggrieved person (or persons) to whom the words are addressed to break the peace or commit any offence against the utterer. This did not happen. R. v Ketz 1948(4) SA p 374 and S. v Serra 1968(1) SA p 292 are authorities for the proposition that an

/offence

offence is committed even if the addressee restrains himself (or herself) from retaliating whether or not that person is a police officer but the wording of the provisions of the sections the learned Judges were there interpreting, as I stated, are manifestly different from our section.

In any event the authorities are clear that in dealing with the words used one must look at the circumstances under which they were uttered and weigh the effect of the words used (R. v Innes 1917 CPD 151 and S. v Serra, supra, p 294). Here we have a person with a high sense of responsibility. He is perfectly aware that explosives and bombs are being conveyed across the country, that many people have been killed maimed or injured, and that thousands of maluties worth of damage to property, public and private, has been suffered. Within the course of an hour or so at most that 25 Km to and from TY should have been traversed. He waited for twice that time at least and when there was no response, he found it necessary to make a trip to Maseru where he met with some frustration, and when that was surmounted, he goes back to Maqhaka but the TY police are still not there. The language used was foul and in bad taste but his mood was understandable. If the TY police had no transport, or did not receive the appellant's message timeously, or did not have a man knowledgeable in handling or difusing explosives or bombs and were looking for one, to cite a few examples of the possible reasons of the obvious delay, the TY police might have, whether politely or in the same tone as the appellant's, answered him.

As I said, I find as a matter of law that no offence has been committed under this particular section of the Act and the appeal must be allowed but if I am wrong on the law it is clearly an offence, which under the circumstances, was of a trivial kind that warranted no prosecution at all, or if prosecution there had to be, merited a sentence of no more than a discharge after a caution or reprimand in terms of s. 319 of the Criminal Procedure and Evidence Act 1981.

  
CHIEF JUSTICE  
21st February 1983

For Appellant : Mr. Maqutu  
For Respondent: Miss Surtie