

IN THE HIGH COURT OF LESOTHO

In the Appeal of :

CLETUS R. SETHUNYA

Appellant

v

REX

Respondent

J U D G M E N T

Delivered by the Hon. Acting Chief Justice
Mr. Justice M.P. Mofokeng on 19th September
1983

The appellant was charged on three counts before the Court of the Chief Magistrate it being alleged briefly in respect of the first two counts that he had stolen the property of his employer, the Ministry of Information. In the third count he was alleged to have contravened the provisions of section 3(a) of the Internal Security (Arms and Ammunition) Act of 1966 in that he had in his possession certain specified rounds of ammunition without holding a firearm certificate in force at the relevant time. The appellant pleaded not guilty to all the three counts. He was found not guilty in respect of the theft charges but guilty on the third count. He was sentenced to pay a fine of M80 or in default thereof undergo imprisonment for a period of four months.

The appellant concedes his conviction but states that the sentence is severe. I do not agree. The times in which we live make this type of an offence very serious. The quantity of ammunition involved was far too much. The negligence displayed by the appellant must be visited with heavy penalties. The present sentence, in my view, meet this requirement and yet its imposition does not involve a failure

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to exercise a proper discretion by the learned magistrate, especially when it is realised that the law imposes the maximum fine at M400 or imprisonment not exceeding one year or to both such fine and imprisonment.

The appeal against sentence for the above reasons is dismissed.

Part of the learned Chief Magistrate's sentence reads
"Ammunition and magazines are forfeited to the Crown.
All exhibits in Count 1 shall be given to the
Ministry of Information and Broadcasting....."

~~The~~ part of the sentence is nothing else but an order as to the disposal of the exhibits at the end of a criminal trial and I shall treat it as such.

Firstly, it is not quite clear to this Court why the magazines were declared forfeited. They were never part and parcel of the exhibits before Court nor did the appellant contravene any law in respect of or in connection with them. There is no evidence on record to justify the making of this order. It is, therefore, set aside.

Secondly, the evidence concerning the exhibits on count 1 was to a certain extent, contradictory. Moreover, the appellant had wished to introduce the evidence of one Eric Horvitch. He went about ^{it} the wrong way. In the result, the learned Chief Magistrate ought not to have made the order of forfeiture. He should, rather have left the question of ownership of the articles wide opened by simply not awarding it to any of the disputing parties without hearing further evidence (orally or verbally) in terms of section 56(3) of Criminal Procedure and Evidence Act 1981. Then the appellant would have had an opportunity, if so advised, of launching the necessary action. In the circumstances, therefore, I have no alternative but to set aside this part of the learned Chief Magistrate's order.

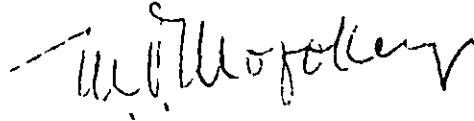
The order made by this Court is as follows :

"It is hereby ordered that the matter of exhibits

/in former

in former count 1 be remitted to the Court of the Subordinate Court to be dealt with in accordance with the provisions of section 56 of the Criminal Procedure and Evidence Act 1981".

It is also ordered that appellant be refunded his appeal deposit.



ACTING CHIEF JUSTICE
19th September 1983

For Appellant · In Person

For Respondent: Adv. Nku