

IN THE HIGH COURT OF LESOTHO

In the matter between .

Matsili Lefata - 1st Appellant

Matlissetso Boutu - 2nd Appellant

and

R E X - Respondent

J U D G M E N T

Delivered by the Hon. Judge, Mr. M. P. Mofokeng on the  
31st day of October, 1983

The two appellants were part of seven accused who were jointly charged before the Subordinate Court of the Resident Magistrate at Leribe. It was alleged by the Crown that they had committed the crime of Housebreaking with intent to steal and theft. The list of the stolen articles, and their estimated value, was attached. One accused pleaded not guilty while the rest, including the two appellants, pleaded guilty. The Public Prosecutor, and quite properly in my view, applied for a separation of trials. The trial of all the accused who pleaded guilty proceeded.

In terms of the provisions of S. 240(1)(b) of the C.P.&E. Act 1981 the Prosecutor, where the accused pleads guilty and he accepts it, is required to outline the facts as disclosed by the evidence in his possession. The whole purpose of this section is to speed up trials in the

/Subordinate ...

Subordinate Courts by obviating from the necessity of calling evidence. However, since the learned Magistrate is not in possession of any facts which would enable him to bring in a verdict, he depends entirely on the information contained in the outline made by the Prosecutor. All that the outline must bring out clearly is embodied in the general principle of law contained concerning S.240(1)(b) viz. that it is sufficient if the facts outlined by the Prosecutor disclose the commission of the offence. (see Dlamini & Another v Rex, 1978(2) L.L.R. 376 at 379 (in the press)).

The facts were very simple in this case and can be briefly stated as follows:

There was a conspiracy to break into the shop of one Abdulla at Maputsoe and when the conspiracy was formed all the accused were present. The nightwatchman who is employed there lives quite close to the said shop. Accused 3 was detailed to observe the movements of the nightwatchman particularly when he goes to sleep.

On the night of the 15th May 1983 he gave a signal. The nightwatchman was asleep. Accused 1 and 2 went to break into the shop. This they achieved by means of digging a hole "on the building of the shop." Implements they used were handed into Court as evidence. The other four accused entered and took out various articles such as blankets, money (cash).

The following morning Abdulla found articles thrown all over the floor of the shop. There was also a big hole. The matter was reported to the police.

/Some ...

Some of the articles stolen from the shop such as blankets, part of the money were retrieved from some of the accused.

All the accused admitted the facts as outlined by the Prosecutor.

The outline of the facts of the case by the Prosecutor to the Court, in my view, accorded with the principle enunciated in Dlamini's case (supra).

The crime of Housebreaking with intent to steal and theft has assumed alarming proportions. The Courts take a very serious view of the matter. However, while a first offender may, where circumstances warrant it, not be sent to prison but rather be treated leniently, yet the Courts have repeatedly said that that is not nor can it be the basis on which all first offenders ought to be treated. In the case of Makhetha Mphutlane v Rex, 1980(2) L.L.R. 358 it was stated clearly that the fact that an accused is a first offender is no guarantee that a non-custodial sentence will not be imposed.

As Counsel for the Crown rightly put it the passing of sentence is pre-eminently a matter for the trial Court and the appellate Court will interfere if that sentence is, in the circumstances, unreasonable. (see Tsitso Mohapi v Res, CRI/A/83/79; Matsoso v R, C. of A. (CRI) No.6 of 1968). Moreover, the learned Magistrate has not been shown to have misdirected himself in any manner.

/The appeal, ...

The appeal, therefore, ought to be dismissed and  
it is so ordered.

*Handwritten signature*

J U D G E  
31st October, 1983

For the Appellant : Mr. Mofolo

For the Crown : Miss Nku