

IN THE HIGH COURT OF LESOTHO

In the Appeal of :

NTS'EISENG RAMOTHOB1 Appellant

v

R E X Respondent

J U D G M E N T

Delivered by the Hon. Chief Justice Mr. Justice
T.S. Cotran on the 20th day of August 1984

Five accused persons were charged before a Resident Magistrate at Leribe of theft of M14,674.00 the property or in the lawful possession of Lesotho Bank. The offence allegedly took place on the 27th April 1981. There was an alternative charge of fraud, not very elegantly drawn, that the five accused, with intent to defraud, had misrepresented to the Lesotho Bank that certain vouchers produced to the Bank for payment, were true and correct "according to the information contained therein" and induced the Bank, to its prejudice, to part with M14,674.00. Four of the accused persons were acquitted. The appellant, who was the second accused at the trial, was convicted on the alternative charge on the 28th April 1983, but was promptly released on bail pending appeal which appeal was argued before me on the 15th June 1984. I took time to consider.

The appellant was a cashier or teller at Lesotho Bank at their branch in Leribe. It was common cause that she paid out

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the amount subject matter of the charge to one or more persons who had perpetrated a fraud which consisted of preparing fictitious payment vouchers in respect of deferred pay of Basotho miners, recruited by a Mine Labour Organisation called the Employment Bureau of Africa ("Teba" for short) with a branch office in Leribe. The evidence was that every miner recruited by a Teba Branch has a file at the branch office and is issued with a serial number and card showing his name, his passport number, the name of his headman, the name of the mine to which he is recruited, his tax identity number and his thumb print and other details. Sixty per cent of the wage of the miner is "deferred", i.e. not paid to him in the R.S.A. but is remitted to Lesotho. When the miner finishes his contract and returns to Lesotho, he receives from his employer before his departure, a deferred pay voucher. The mechanics of the scheme involves the interplay of various bodies: the mine in the R.S.A., the recruiting organisation in Lesotho (in the present instance "Teba" - Leribe Branch), Lesotho Bank (where the deferred pay - which is interest bearing - is deposited awaiting collection), and of course the individual miner who at the end of his contract comes armed with the deferred pay voucher showing his entitlement. This he must present in the first instance, on his return home, to the branch of Teba that recruited him, who must satisfy themselves, that everything presented to them by the miner is in order and coincide with the details of him in their file, and on being so satisfied, would issue the miner with:-

- (a) a Lesotho Bank form LB 107 (Teba office have blanks) duly completed showing the details of the miner, the amount to be paid to him

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and his signature or thumb print, Teba's rubber stamp, and the signature of an authorised person of that organisation and

- (b) an "interest" form. I have not seen a specimen but the interest is apparently computed at the bank for the rate (which must be co-ordinated with the deposit period) can only be available to the bank itself.

The miner initially presents himself to a clerk in the deferred pay department of Lesotho Bank. That functionary is supposed to check the deferred pay voucher, compare it with the Lesotho Bank form (LB 107) completed by Teba, calculate the interest earned on the interest slip and put the bank rubber stamp "Verified" on the LB 107 form and initial it. The miner then takes the forms to the bank teller who is supposed to check his identity from his passport photograph and pay out entering such payment in his or her cash book, Exhibit L.

Now some of the miners lose their "deferred pay vouchers" between their discharge from the mine and their arrival home. Machinery does exist for them to receive their entitlement despite the loss of the vouchers albeit after simple formalities are completed. The miner who loses his deferred pay voucher goes to the office of Teba that recruited him and reports the loss. His file is brought out and his details checked. A telegram, signed by the branch manager of Teba, is then sent to the mine that employed the person, and by a process of computerisation at headquarters, if the claim of the miner is established, authority is given to the Teba branch concerned to pay out, i.e. prepare a new (duplicate) deferred pay voucher (they are in

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possession of blanks) to enable the miner to receive his deferred pay plus interest. The form is completed at Teba. Teba should prepare a bank form (LB 107) and attach an interest form in the normal way as with a person who had not lost his deferred pay voucher. The miner takes these papers to the bank where the bank official would check the miner's papers and calculate his interest entitlement on the form and passes the miner to the bank teller who would pay out. The bank teller has before him in both cases a copy of the deferred pay slip (original or duplicate) the bank form LB 107 with a "Verified" stamp and the interest slip. The miner produces his passport and the teller looks to see if the picture and details are the same and if satisfied pays out.

The procedure is not cumbersome, but a dishonest employee (or employees) or ex-employee (or ex-employees) at any Teba branch can perpetrate a fraud either by

- (1) hoodwinking a credulous or incompetent bank clerk at the deferred pay department of the bank or by recruiting him as aider abettor or conspirator to facilitate the fraud, or
- (2) by-passing the deferred pay department of the bank altogether and hoodwinking or recruiting as aider abettor or conspirator the teller at the bank to facilitate the success of the fraud.

It is clear from the above that no fraud could have succeeded unless the deferred pay clerk at the bank and/or the teller co-operated with an employee or ex-employee from Teba. The bank rubber stamp "Verified" can be duplicated easily since all the forms, including the LB 107, finally end up (after a few weeks) with Teba, and of course such employee or ex-employee is familiar

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with the filing system, the procedure, and is in possession of miners' files past and present and the Teba rubber stamps.

On the 27th April 1981 seven deferred pay vouchers (Form Teba 3) for seven miners (who were supposed to have lost their original vouchers) together with seven Lesotho Bank forms (Form LB 107) purportedly duly completed where appropriate by Teba and stamped "verified" by the Bank (Exhibits A - G) were paid by the appellant who was the bank teller.

I have to refer to the accused who were acquitted briefly.

There were two clerks at the deferred pay department at Teba office on the 27th April 1981, viz, A4 and A5. A4 fled whilst the trial was in progress and is still at large. A5 remained for the whole trial, but with A4 gone, with evidence of access of other employees at Teba to the miners' personal details, blank forms and rubber stamps, etc., and in the absence of conclusive evidence implicating him, he was acquitted.

A3 was the clerk in charge of the deferred pay vouchers (and lost deferred pay vouchers) department at Lesotho Bank at the material date. He had been employed in the bank for some time and was familiar with the work. It was his job, upon seeing the miner in his office, to examine his deferred pay voucher or the lost deferred pay voucher as the case may be, check the bank form LB 107, and after satisfying himself that it bears the initials of the authorised signatory of Teba, the details of the miner and the amount to be received, affix the "Verified" bank rubber stamp and initial the same and calculate the interest due to the miner on the separate interest form. The miner should have his passport with him for identification. There is no

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evidence as to how long this process of verification and calculation of interest would take, probably around seven to ten minutes. The miner with all the documents then proceeds to the teller. On the 27th April 1981 A3 had an assistant Bofihla Maseru (P.W.5) a new bank employee who started his job on the 23rd April 1981. He appeared as a witness for the prosecution and testified that he was still being trained by A3, that he did not process any lost deferred pay vouchers for miners on that day without A3 assistance, and he did not recognise the initials on the "Verified" stamp (Exhibits A - G) as that of A3 nor indeed did the Bank manager who was familiar with it.

A3 did not testify because the learned magistrate held that as against him there was "no case" to answer on the grounds that the "initials" within the "Verified" bank stamp was "not his" according to the Bank manager and "there was no evidence that the vouchers passed through his hands". The first remark was neither here or there because A3 would not have put his genuine initials on the LB 107 form in such a case but would have scribbled something unintelligible. There was a possibility, in fact a probability, that the seven false vouchers Exhibits A - G did not pass through the deferred pay department of the Bank at all. Apart from the scribbled unrecognizable initials within the "Verified" stamp, every stamp was virtually wholly defaced. A3 had therefore to be given the benefit of the doubt even if Bofihla's evidence was believed because, as I said, to procure a forged bank rubber stamp, would not have been a difficult task for an employee of Teba and jot down initials.

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That left A1 and the appellant. It was common cause that A1 was the "boy friend" of the appellant and at the same time the brother-in-law of A5 who worked in the deferred pay department at Teba and was familiar with the work and who, as I said, was given the benefit of the doubt and discharged.

It is normal for the police to take the finger prints of all suspects and there is no reason to believe that the finger prints of all five accused persons were not so taken although this does not appear from the evidence. What was in evidence was that a Sgt. Kaka in Leribe took the finger prints of A1 on L.M.P. form 35, Exhibit M on 12th August 1981 and sent it to Maseru for examination by Sgt. Moloinyane, the expert in this field, who had before him the seven false deferred pay vouchers and the accompanying LB 107 forms (Exhibits A - G) each of which bearing what, to a layman, looks like a thumb print impression of the person receiving the money from the teller at the Bank, for the purpose of comparison. Sgt. Moloinyane found, without difficulty, that the impressions on this form were not a thumb print or finger print impression but a right toe impression. He informed Sgt. Kaka accordingly. Sgt. Kaka testified that he then took, on a piece of paper, the big toe marks of A1 and sent it (the paper) to Sgt. Moloinyane. This piece of paper is Exhibit I. It bears A1's name, Sgt. Kaka's name, and at the back A1's name and the police case file number and is date stamped by the Criminal Record Office in Maseru on 13th August 1981 i.e. one day after the finger prints of A1 were taken on L.M.P. 35 - Exhibit M.

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Now it was put to Sgt. Kaka in cross examination that there could be a "mix up" in finger prints. The Sergeant replied that that was not possible because the accused should sign the form. He was of course referring to Form L.M.P. 35 (Exhibit M) which does have a space for the prisoner's name. He was then asked if the piece of paper Exhibit I purporting to show A1's big toe prints was signed by him, i.e. A1 and the Sergeant replied that that one was not signed by A1. There was no suggestion in cross examination that A1's toe prints were not taken at all. Sgt. Moloinyane's scientific ability was challenged but the magistrate accepted it as true, viz, that the toe marks on Exhibits A - G were the same as those that appear on Exhibit I but he did not accept that the right toe mark on Exhibit I was actually the big toe mark of A1. Sgt. Kaka, let it be recalled, swore that he took A1's toe marks on the paper Exhibit I although he admitted that A1 did not sign this paper. The attorney did not suggest that an impression of A1's big toe was not taken. This was said later by A1 and is obviously an afterthought. At no time did Sgt. Kaka admit (or even imply) that the big toe mark Exhibit I "could not have been A1's". These words were the magistrate's own invention. If the witness swore he took the impression of A1's big toe, but that A1 did not so sign the paper it was the duty of the magistrate to find out if this was through an omission that vitiated the Sergeant's evidence. If for example the Sergeant took the impressions of the big toes of all the five accused when he discovered that the marks were toe marks not thumb marks, and none signed these papers then a mix up was possible, but if the only toe mark he took was A1's,

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the magistrate, with respect, took the way of least resistance.
A1 must consider himself lucky to be free.

The magistrate outlined the evidence against the appellant. It was perforce circumstantial in nature but it was cogent and compelling pointing irresistably to the criminal guilt of the appellant. The Crown must of course exclude the possibility that the appellant was incompetent or negligent and had it been one or two isolated vouchers wrongly paid one may perhaps have stopped to ponder, but that she paid out seven miners on the same day without looking at any of their passports on the strength of bank forms that did not bear A3's initials (with which she must have been familiar) conclusively proves her guilt as the magistrate found.

The sentence of 3 years imprisonment for a person in a position of trust is not severe. What has worried me however is the inordinate delay in the prosecution. The game was up in June 1981 when Teba received the documents from the bank and the investigations should not have taken so long to complete. The appeal itself took over a year before it was disposed of so that the appellant has been at large (when in my opinion she should not have been because her prospects of success in the appeal were virtually nil) for a long time.

I would suspend one year of the three years sentence for three years on condition that appellant be not convicted of an offence involving dishonesty during the period of suspension. The appellant will now be committed to pay the price of her dishonesty.


CHIEF JUSTICE

20th August 1984

For Appellant : Mr. Ramodibedi
For Defendant : Mrs. Bosiu