

IN THE HIGH COURT OF LESOTHO

In the Application :

MOKEKE NTHO                      Applicant

v

REX                                      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 February, 1984

-----

This is application for leave to appeal to the Court of Appeal combined with an application for bail pending appeal.

The facts were as follows:-

The applicant was convicted by a Subordinate Court of the first class sitting at Mohale's Hoek for theft of a motor vehicle valued at some M77,000. He was convicted. In terms of s.293 of the Criminal Procedure and Evidence Act 1981 the magistrate remitted the case to the High Court for sentence. Almost at the same time that the applicant was committed to the High Court for sentence his counsel at the trial filed notice of appeal against the conviction. When the case came up for sentence Mr. Matlhare appeared on behalf of the applicant and he suggested and I agreed

/that

that he may argue on the merits of the applicant's conviction in open Court as if it were an appeal.

Mr. Matlhare did so and Miss Moruthoane for the Crown replied.

Section 294 (3) of the Criminal Procedure and Evidence Act 1981 provides:-

"When a person is brought before the High Court pursuant to sub-section (2) the High Court -

- (a) shall enquire into the circumstance of the case; and
- (b) if satisfied from the record of that person's guilt shall thereafter proceed as if that person had pleaded guilty before the High Court in respect of the offence for which he has been so committed; or
- (c) otherwise may decline to proceed and make such orders and give such directives as it may consider appropriate for the purpose of dealing with the question of that person's guilt.

On the 11th of January 1984 the High Court after a reserved Judgment, sentenced the accused to 4 years imprisonment.

Section 7(3) of the Court of Appeal Act provides that a sentence passed by the High Court on a person committed to the High Court for sentence shall be deemed to be a sentence upon such person on a trial held by the High Court and an appeal against such sentence shall lie accordingly to the Court.

/Although

Although in the Judgment I mentioned the words "dismissed" the appeal, what I had really meant was that I was satisfied, after hearing arguments, of the guilt of the applicant in terms of sub-section 3 of s.294 of the Criminal Procedure and Evidence Act 1981. Section 294 (4) makes the position of the applicant clear. It follows that an appeal to the Court of Appeal lies directly as of right and no leave is necessary but if it is I hereby grant such leave. The application for bail pending appeal to the Court of Appeal has no merits and is dismissed.

CHIEF JUSTICE  
20th February 1984

For Applicant : Mr. Matlhare            )  
For Respondent : Miss Moruthoane        ) with copies of Judgment