

IN THE HIGH COURT OF LESOTHO

In the Appeal of

MAKOTOKO MOLAPO

Appellant

v

R E X

J U D G M E N T

Delivered by the Hon the Chief Justice, Mr Justice  
T.S. Cotran on the 3rd day of May, 1984

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The appellant Makotoko Molapo was convicted of crimen injuria and sentenced to pay a fine of M150 or in default of payment to 10 months imprisonment

In order to bring this charge home it was incumbent upon the prosecutor to prove that the injury to the complainant's dignity was serious, but as was said in R v Muller 1938 OPD 141 at 143 in its application to the facts the crimen injuria cannot be static in time or in relation to persons. The matter must be left to the discretion of the Court but it would be wrong to allow it to be subject to the criminal law

The complainant is a high ranking police officer who was asked to investigate a complaint made by the mother of the appellant to the Prime Minister (in his capacity as Chief of Rakolo) concerning the appellant relationship with, and treatment of, his wife with whom the appellant did not get along well or from whom he was divorced or separated.

There is little doubt that the complainant's attempts to  
/investigate

investigate were not only unsuccessful but were resented by the appellant to a very high degree and culminated in his sending the complainant, what I shall call a stinking letter, couched in foul language, in which the complainant is described, inter alia, as a "boy" where the "buttock" makes his head "go crazy"

It would seem that the appellant had served in the Lesotho Mounted Police in the sixties. He probably joined the Force before the complainant, but the complainant received rapid promotion whilst the appellant did not, and he finally left the police service and took up a civilian job. A large part of the letter deals with this matter

I find this injuria very borderline but will not substitute my own opinion to that of the trial magistrate because seriousness depends to a great extent upon the modes of thought prevalent amongst any particular community or at any period of time or upon those of different classes or grades of society and the magistrate is a better judge of that

I will confirm the conviction but I am far from happy on sentence. This letter was in fact addressed to the complainant himself and there is no evidence that, apart from his secretary, the contents reached anyone else's ears. I do not like the idea of "imprisonment in default of payment" and this part of the sentence is quashed. I also reduce the fine to M100. If this is not paid (or has not been paid yet) it will be raised by way of levy on the appellant's movable or immovable property

CHIEF JUSTICE  
3rd May 1984

For Appellant      Adv Ramodibedi  
For Crown            Mrs Bosiu