

IN THE HIGH COURT OF LESOTHO

In the Appeal of :

TSITSO MOKHETHI

V

R E X

J U D G M E N T

Delivered by the Hon. Acting Judge Mr. Justice
J.L. Kheola on the 4th day of June, 1984.

The appellant was charged with contravening section 3(a) of the dangerous medicine Act No. 21 of 1973. It is alleged that on the 31st December, 1982 and at or near Tiping in the district of Berea the appellant unlawfully dealt in dagga weighing 113,000 grams without a permit.

He pleaded not guilty. At the end of the trial he was found guilty as charged and sentenced to 15 months' imprisonment.

The Crown evidence is that on the 31st December, 1982 at about 12 midnight the Mapoteng police conducted a road block at Tiping. While they were there a grey Ford Cortina van with registration No. FTZ. 403T was stopped by them. As soon as it stopped two men came out and ran away. The policemen chased them but failed to catch them because it was dark. The vehicle was searched and seven bags of dagga

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were found in it.

It subsequently turned out that the vehicle belonged to one Matobako Ntshilele. He lent the vehicle to the appellant on the 29th December, 1982 on the understanding that the appellant was going to visit his wife in Welkom. On the 1st January, 1983 the appellant went to Matobako and told him that his vehicle had been seized by the police at Mapoteng because it was conveying dagga. The appellant further reported that he left the keys in the vehicle and ran away when the police stopped them.

The Court a quo found that there was overwhelming evidence that the appellant borrowed Matobako's vehicle and that he later came to him and reported that he had been conveying dagga with it. The appellant chose not to give evidence in the face of the direct evidence implicating him.

The appellant appeals against the judgment of the trial Court on the ground that he was not found in possession of the dagga and the vehicle carrying it. There is altogether no substance in this argument because the police found two men in possession of the dagga and the vehicle. Unfortunately the two men fled before the police saw who they were. The appellant confessed to the owner of the vehicle and other witnesses that he was one of the two men who were found in possession of the dagga but managed to escape before they were apprehended. Mr. Pheko for the appellant conceded that by failing to give evidence to rebut the prima facie case established by the Crown,

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the evidence became conclusive. I must point out that at the trial Court the appellant was represented by Mr. Jobodvane who also lodged the appeal.

The appeal is dismissed.

Immediately after dismissing the appeal it was reported to me that the appellant had failed to appear before this Court having been properly served on the 15th March, 1984. I ordered that a warrant of his arrest should be issued and that his bail deposit of M200 should be forfeited to the Crown because the appellant was in breach of the condition upon which the bail was granted.

ACTING JUDGE.

4th June, 1984.

For the Appellant : Mr. Phoko

For the Crown : Mr. Peete