

IN THE HIGH COURT OF LESOTHO

In the Appeal of

MOLISE TS'IU

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 5th day of June, 1984

The appellant was charged with theft of Government property and the charge sheet reads

" In that at all relevant times, the said accused was employed by the Lesotho Government, as a storeman stationed at Leribe Government garage, and was such a servant of the Lesotho Government and entrusted with care and custody of the motor vehicle parts which came into his possession on account of his employer, the said motor vehicle parts being the property of the Lesotho Government, the said accused did during the period between the 1st day of April, 1978 to the 31st day of March, 1981 unlawfully and intentionally steal the under-mentioned motor vehicle parts the property or in the lawful possession of the Lesotho Government

List of the Stolen Property

12 Filters
68 Spare Parts
Total value R264.49

/The appellant

The appellant pleaded not guilty to the charge. At the end of the trial he was found guilty as charged and sentenced to 30 months' imprisonment. The appellant now appeals on several grounds but the main ones are that

- (a) while it was claimed by the Crown that the procedure is for the mechanics to present a requisition order before being issued with spare parts, it was nevertheless admitted that sometimes the mechanic never presented a requisition order to the appellant but approached him in person to demand the required parts while the requisition order had to be signed by a senior officer;
- (b) neither the evidence nor the exhibits reflected the period to which the shortage related and that there is nothing in the audited accounts showing what items were brought forward and what discrepancies belonged to the period before appellant's tenure of office.

The evidence of the Crown is contained in a report made by the auditor, one Motloang Masia, who audited the books of accounts kept by the appellant. The books were checked in reconciliation with the stock in hand. The books reflected a shortage of 12 filters, 4 dust caps, 1 shackle nut, 2 rotar arms, 1 inner oil seal, 5 "u" bolts, 16 12v bulbs, 1 radiator cap, 1 wheel drum, 12 spark plugs, 20 rings, 8 engine mountings, 1 prop shaft, 2 bulbs, 2 master cyl kit, 1 slave cly. kit, 6 condensers and 1 front lining. The appellant admitted the shortage but failed to explain how it came about. He contended that the missing filters were of different kinds and prices and challenged the evidence of the Crown that their price was the same at R27 00 each.

/Regarding ...

Regarding the first ground of appeal that sometimes the mechanics did not give the appellant a requisition order I must point out that the appellant had two books in his office. He had the ledger and a stock card. A stock card is a document on which the appellant recorded any spare part he took out from the storeroom and he cannot be heard to say that sometimes he just dished out spares without recording anywhere despite the fact that the stock card was readily available to him. Even if at times the mechanics asked him to issue spares without a requisition order I am sure that the appellant made sure that the requisition order eventually came to him. I am not convinced that he did not have good training to such an extent that he could issue spares without recording in his books of account. His supervisor, Lepolesa Phomane (PW.1) testified that the appellant was very competent in his work during the two years that he worked with him. There is no merit in the first ground of appeal and it fails.

To answer the second ground of appeal I shall refer to section 267(1) (a) (b) of the Criminal Procedure and Evidence which provides:

- "(1) upon the trial of a person charged with theft.
 - (a) While employed in any capacity in the public service or by the Government, of money or any other property, which belongs to the Government or which came into his possession by virtue of his employment; or
 - (b) While a clerk, servant or agent, of money or any other property which belongs to his employer or principal, or which came into

/his

his possession on account of his employer or principal, an entry in any book of account kept by the accused or kept under or subject to his charge or supervision, purporting to be an entry of the receipt of any money or other property shall be evidence that the money or other property so purporting to have been received was so received by him." (My underlining).

Mr. Mofolo, counsel for the appellant, argued very strongly that there was no evidence by the Crown to show that when the appellant took over from his predecessor there was no shortage. With respect, I must disagree with him because section 267 quoted above especially the words I have underlined show that the mere entry in accused's books of account purporting to be a receipt of the property mentioned therein shall be evidence that the accused received such goods. The books of account kept by the appellant were checked by an auditor and the entries in those books are evidence that the appellant received those spare parts. The difficulty I see in Mr. Mofolo's submission is that the appellant never said there were discrepancies when he took over from his predecessor. The two questions put by the appellant to PW.3 do not support that submission.

Q. - When did I first been (sic) appointed on transfer to Leribe?

A. - No more recall.

Q. - Had there been a person doing the same job I took over from him?

A. - Yes, but cannot recall him by name.


I cannot detect anything in those questions to suggest that the appellant was saying there were discrepancies when his predecessor handed over to him. There is no suggestion that some of the property was received by his predecessor. I find it to be sheer speculation that the books of account revealed any deficiency when the appellant took over as storeman. The second ground of appeal also falls away.

I am convinced that the trial Court was justified to come to the conclusion that the appellant stole the missing spare parts.

The appeal on conviction is dismissed.

Taking into account the value of the missing spare parts, the fact that the appellant was a first offender and the fact that the appellant admitted the shortage the sentence of 2½ years' imprisonment gave me a sense of shock. It appears to me to be extremely harsh. The appeal on sentence is upheld. The sentence imposed by the trial Court is set aside.

A sentence of 12 months' imprisonment is imposed.
Appeal fee to be refunded to the appellant.



ACTING JUDGE.
7th June, 1984.

For the Appellant : Mr. Mofolo
For the Crown : Mr. Kabatsi.