

IN THE HIGH COURT OF LESOTHO

In the Appeal of :

TSELISO PITSO 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 6th day of August 1984

This is an appeal by the Director of Public Prosecutions by way of a case stated in terms of s.73(8) of the Subordinate Courts Proclamation No.58/1938 against an order of a magistrate sitting at Qacha's Nek (B.S. Makaliana Esq.) releasing a certain amount of illegally imported liquor to an accused person after he pleaded guilty to an offence contrary to s.4 as read with s.9 of the Lesotho Liquor Commission Act 1974 (Vol. XIX Laws of Lesotho p.84/85). He was sentenced to pay a fine of M30 but this was suspended.

S.4 of the Liquor Commission Act provides:

"No liquor shall be imported into Lesotho except by the Government of Lesotho through the agency of its Commission:

Provided that the Minister may grant such exemptions for such periods as he may deem necessary; and provided further that liquor imported into the Common Customs Area under item 407.02 of Schedule No.4 to the Customs and Excise Order No.14 of 1970, may also be imported into Lesotho."

Neither of the provisos applied to the accused.

/S.9

S.9 provides:-

"Any person who contravenes any provision of this Act is guilty of an offence and liable on conviction to a fine of five hundred rand or six months imprisonment or both."

S.10 of the same Act provides:-

"All Liquor confiscated under section 9 of this Act shall be dealt with in terms of section 91 of the Customs and Excise Order 1970:

Provided that such liquor shall not be disposed of until seven days have elapsed after confiscation, during which time it may be released to the importer if he satisfies the Director of Customs and Excise that it was imported legally."

The magistrate disregarded these mandatory provisions of the law and invoked s.56 of the Criminal Procedure and Evidence Proclamation which empowers him (by paragraph (1)(a)) to return an article to the person from whom it was seized if such person may lawfully possess it, but that section applies only if a law does not provide a different way of dealing with the article in question.

S.56(1) reads:-

"The judge or judicial officer presiding at criminal proceedings shall at the conclusion of such proceedings, but subject to this Act or any other law under which any matter shall or may be forfeited, etc. ".

From his reasons for the order the magistrate does not seem to me to be able to grasp basic English used in legislative enactments and thinks that he can choose, as his fancy takes him, either to apply the Liquor Commission Act or the Criminal Procedure and Evidence Act. He has no such discretion and his order must accordingly be quashed and substituted by an order that the liquor be forfeited.

/I also

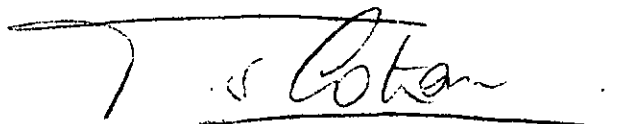
I also vary the sentence to the extent that the fine is not suspended and should now be paid.

The magistrate ordered that the liquor be returned "for the purpose of consumption" and Mr. Peete from the bar tells me this order was carried out immediately. This was wrong. Magistrates have been warned that they should not normally order that exhibits be disposed of until the time of appeal has elapsed. Sub s.3 of the same s.56 of the Criminal Procedure and Evidence Act 1981 provides for the "suspension" of any order pending appeal or review.

Every magistrate in Lesotho is bound to follow this judgment, viz, that confiscation and forfeiture of illegally imported liquor is mandatory.

Will the registrar send a copy of this judgment to every magistrate and ask him or her to acknowledge receipt of the same.

If any judicial officer in the lower Courts disregards this judgment he will do so at his peril. There will be a presumption that he has acted corruptly and disciplinary proceedings will be taken against him which may entail dismissal.



CHIEF JUSTICE
6th August 1984

For Appellant : In Person
For Crown : Mr. Peete