

IN THE HIGH COURT OF LESOTHO

In the Appeal of :

TEBOHO MADUNA

Appellant

vs.

R E X

J U D G M E N T

Delivered by the honourable Acting Chief Justice Mr.
Justice J.L. Kheola on the 27th day of October, 1986.

The appellant appeared before the Resident Magistrate for the district of Leribe charged with housebreaking with intent to steal and theft, it being alleged that on the 8th July, 1985 and at Lisemeng in the district of Leribe the said accused did unlawfully and with intent to steal, break and enter the house of one Michael Week and did unlawfully steal nine (9) chairs, two (2) units, one fridge, two (2) tables, one sideboard, one dressing table and two (2) coffee tables the property or in the lawful possession of the said Michael Week. The appellant, having pleaded guilty to the charge, was convicted and sentenced to two (2) years imprisonment without the option of a fine.

The evidence was that on the 9th July, 1985 the complainant closed the windows of his house and locked its door and went to Durban. When he returned to Lesotho he found that one of the windows of his house

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was broken and the goods mentioned in the charge sheet were missing. A report was made to the police and investigations were started immediately but in vain. It was only in May 1986 that the appellant was found in possession of the missing goods and made an explanation that he was encouraged by one Thabo Tlailai to commit the offence.

The appeal is against sentence only. The first ground of appeal is that the learned Resident Magistrate clearly erred in playing a ~~passive~~ role instead of assisting in the investigation of relevant circumstances in favour of the appellant regard being had to the fact that the latter was not represented. Reference was made to the case of Moeketsi Motsoari v. Rex, CRI/A/22/84. The personal circumstances of the appellant were that he is married with three children the last of whom is only a few months old; moreover the appellant is the sole breadwinner of his family.

It may be that the learned Resident Magistrate committed an irregularity by not taking into consideration the personal circumstances of the appellant and failed to elicit relevant information before he passed sentence. However, the important question is: had the trial court not committed the above irregularity, could it have imposed a sentence lighter than the present one? In other words, now that the so called personal circumstances have been disclosed to this Court, does the sentence seem to be strikingly harsh? The answer is definitely in the negative. The offence with which the appellant was charged was a serious one. He stole the entire furniture of the complainant's house and furnished his own house with it for about ten (10) months. The value of the furniture was M1,430-00. Although the furniture was recovered there can be no doubt that it had depreciated.

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I must point out that housebreaking with intent to steal and theft is a serious offence for which even a first offender may be sent to prison for a long term of imprisonment. The learned Resident Magistrate was justified in taking into consideration the prevalence of that particular offence in his district.

It is not correct that the learned Resident Magistrate failed to take into account the fact that the goods were all recovered. Reference was made to the cases of Phohlo v. Rex CRI/A/22/86 and Nthunya v. Rex CRI/A/23/86. The two cases are distinguishable from the present case in that in the former the goods were recovered after a very short time after their disappearance. In Phohlo's case the appellant snatched a bag containing over M60.000; he was captured immediately after taking the bag. The present case is one of house-breaking with intent to steal and theft and the trial court did distinguish it from theft simpliciter.

For the reasons stated above I came to the conclusion that whatever irregularity might have been committed by the trial court, there was no prejudice to the appellant and no miscarriage of justice occurred.

The appeal was dismissed.

J.L. KHEOLA
ACTING CHIEF JUSTICE.

5th January, 1987.

For Appellant - no appearance.
For Crown - Miss Nku.