

IN THE HIGH COURT OF LESOTHO

In the Appeal of :

MARAKABEI KHOELI
PHAFOLI MOTEMEKOANE

V

R E X

J U D G M E N T

Delivered by the Hon. Mr. Justice M.P. Mofokeng
on the 18th March, 1986.

Both appellants were convicted by a Subordinate Court with the crime of theft. The details thereof are not necessary save to mention that each of the appellant was sentenced to serve a period of 12 (twelve) months. Both appellants are on bail pending the hearing of their appeal.

On the purported day of hearing appellants made no appearances neither did their legal representative. The notice of set down had been served on the appellants.

When a record of the case reaches the Registrar of the High Court, he must then place a copy of such record before a judge of the High Court. The latter peruses it and decides whether to dismiss the appeal summarily in terms of sec. 327 of the Criminal Procedure and Evidence Act 1981 or causes the matter to be placed on the roll. The appellants and the Director of Public Prosecution are served with the said notice.

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In the present case there is no indication whatsoever nor does the Registrar remember compliance with sections 327 and 328 (supra). This is a very serious omission indeed because what has been omitted is part of the chain in the prosecution of an appeal. (William Mabote v Rex, CRI/A/55/83). The Registrar has no right to cause a notice to be served on the parties without and order of the High Court. He cannot deprive the High Court of exercising its duty in terms of sections 327 and 328 (supra). This is a very serious omission on the part of the Registrar.

Consequently, the matter was irregularly placed on the roll for hearing for today. Neither can the Court order forfeiture of their bail, when the provisions of the law have been ignored.

In the result, the matter was struck off the roll for hearing for today. When the position, as set out above, is regularised the matter may be set down for hearing.

Crown Counsel in fairness to him entirely agreed with the Court's view.

J U D G E.

18th March, 1986.

For Appellant : No appearance
For Crown . Mr. Lenono.