

IN THE HIGH COURT OF LESOTHO

In the Appeal of

R E X

Appellant

v

THABO MOEKETSI

Respondent

REASONS FOR JUDGMENT

Filed by the Hon. Mr. Justice B.K. Molai
on the 20th day of March, 1986.

This appeal has already been allowed and the following are my reasons for the decision. Respondent was the accused before the Maseru magistrate court. He was charged with contravening Section 90(1) read with subsection (4) of the Road Traffic Act No.8 of 1981. The allegations disclosed by the charge sheet were as follows

"Upon or about the 9th April, 1985 and on the public road Maseru-Mafeteng at or near Lekhaloaneng near Malunga hotel, in Maseru the said accused while being or was the driver of motor vehicle A1059 did unlawfully drive the said motor vehicle recklessly or negligently on the said public road and collide with another motor vehicle, to wit, X6571, and thus the said accused did commit an offence as aforesaid."

To this charge, Respondent pleaded guilty and the provisions of S.240(1)(b) of the Criminal Procedure and Evidence Act, 1981 were invoked

The facts outlined by the public prosecutor disclosed that at about 10 45 a.m on the day in question, the Respondent was driving the motor vehicle registration A1059 along the Maseru/Mafeteng public road. The road was straight and the weather clear. There was, therefore nothing to obstruct the view of the Respondent who was travelling in the direction towards Maseru. As he approached a place called Malunga hotel, the other vehicle

2/ registration

Registration No X6571 driven by Traffic Police officers on patrol was also travelling along the same public road in the opposite direction i.e. the direction towards Mafeteng.

When he was next to Malunga hotel, the driver of the vehicle Registration No.X6571 suddenly noticed Respondent's vehicle approaching and travelling on its right hand side of the road. It was already very close to him. He immediately applied the brakes and pulled his vehicle X6571 to a halt still keeping his correct side of the road. However, Respondent's vehicle A 1059 came straight into his stationary vehicle and there was a head-on collision. The Respondent was subsequently charged as aforesaid.

After he had admitted the facts as correct, the Respondent explained as the cause of the accident that his vehicle wobbled, he tried to apply the brakes but felt numb and fainted. The next thing he found himself vomiting. It was the first time that it happened with him.

In his reasons for judgment, the trial magistrate stated, inter alia, that without being influenced by the explanation given by the Respondent he found nothing in the facts, outlined by the public prosecutor, to indicate that Respondent had been negligent or reckless in his driving. Wherefor, in exercise of the discretion vested in him under the provisions of S.175(3) of the Criminal Procedure and Evidence Act, 1981 he acquitted and discharged the Respondent.

For obvious reasons, the Director of Public Prosecutions was unhappy with the verdict returned by the trial magistrate whom he requested to state the case on a point of law framed in the following terms

"whether upon the facts and circumstances of the case the court was in law justified in exercising Procedure and Evidence Act No. 7 of 1981 in acquitting and discharging the accused."

In the first place, as outlined by the Public Prosecutor and admitted by the Respondent, the fact clearly indicated that at the time of the collision the Respondent

3/ was driving

was driving his vehicle on its right side of the road. Now, Section 59(1) of the Road Traffic Act No.8 of 1981 provides, in part

"59(1) A person driving a motor vehicle on a public road shall do so by driving on the left side"

If he were admittedly driving his vehicle on its right side of the road it must be accepted that Respondent was driving contrary to the provisions of Section 59(1) of the Road Traffic Act, supra, and for that reason negligent. There was therefore no justification for the trial magistrate's finding that there was nothing in the facts to show that Respondent was negligent or reckless in his driving.

Secondly, by implication, subsection (3) of Section 175 of the Criminal Procedure and Evidence Act, 1981 seems to apply in cases where the accused person had pleaded not guilty and the crown had led evidence.

The Subsection reads

(3) If, at the close of the case for the prosecution, the court considers that there is no evidence that the accused committed the offence charged in the charge or any other offence of which he might be convicted thereon, the court may return a verdict of not guilty."

It stands to reason, therefore, that the exercise of the discretion vested in him under the provisions of Section 175(3) of the Criminal Procedure and Evidence Act, 1981 where the Respondent had pleaded guilty was a misdirection on the part of the trial magistrate. The relevant section in the circumstances of this case was clearly S 240(1)(b) of the Criminal Procedure and Evidence Act 1981. It reads, in part

"240 (1) If a person charged with any offence before any court pleads guilty to that offence or to an offence of which he might be found guilty on that charge and the prosecutor accepts that plea, the court may"

(b) If it is a subordinate court, and the prosecutor states the facts

4/ disclosed

disclosed by the evidence in his possession, the court shall, after recording such facts, ask the person whether he admits them and if he does, bring in a verdict without hearing any evidence."

In admitting the facts as outlined by the public prosecutor the Respondent in this case was recorded as having given an explanation the effect of which was clearly to deny the presence of mens rea i.e. one of the essential elements of the offence against which he stood charged. The plea of guilty rendered by the Respondent could not, for that reason, be considered an unqualified one. That being so, it was the duty of the trial magistrate to alter Respondent's plea of guilty to that of not guilty to afford the prosecution the opportunity to lead viva voce evidence. Failure to do so was, in my opinion, a serious irregularity prejudicial to the prosecution case.

On the foregoing I took the view that the question of law posed by the director of Public Prosecutions had to be answered in the negative. The decision of the trial magistrate acquitting and discharging the Respondent in the circumstances of this case was clearly a perversion of justice which could not be permitted.

Wherefor, I allowed the appeal as aforesaid and made the following order case to start de novo but before a different magistrate.

B.K. MOLEAI

JUDGE

20th March, 1986.

For Appellant Mr. Kalamathan
For Respondent In Person.