

IN THE HIGH COURT OF LESOTHO

In the appeal of

STEPHEN MOKHEHLE MAKHOBALO

v

R E X

J U D G M E N T

Delivered by the Hon. Mr Justice M. P. Mofokeng
on the 24th day of March, 1986

The appellant appeals against both his conviction and sentence it being alleged that he contravened the provisions of S. 345 of the Criminal Procedure and Evidence Act No 9 of 1981

It would appear that the complainant's vehicle was not in order. He asked the appellant to look it over. The latter found no fault with it. He then said he wished to drive it but the complainant refused. Without the consent of the owner, the accused drove it and when he returned it, it was a scrap.

The appellant had pleaded guilty, but the Public Prosecutor thought that the appellant would turn against his evidence. He then called evidence to prove his case against the accused beyond a reasonable ground. (R. v Moteetee, 1974-5 L.L.R.) In his plea in mitigation he said "I see now I am wrong". In my view the Crown has proved its case against the appellant beyond reasonable grounds. The appeal against conviction is therefore dismissed.

/As regards ...

As regards sentence, the learned Magistrate did not take into account the personal circumstance of the appellant and the condition under which the offence was committed. Moreover the appellant showed remorse and even indicated to repair the complainant's vehicle.

The learned Magistrate's sentence is severe in the circumstances and it is set aside and substituted by the following.

" Sentenced to six(6) months' imprisonment the whole of which is suspended for a period of two (2) years on condition he is not convicted of an offence involving dishonesty "

M. P. MOFOKENG
J U D G E

24th March, 1986

For Appellant Mr G. N. Mofolo

For Crown Mr. Kamalanathan