

CRI/A/13/86

IN THE HIGH COURT OF LESOTHO

In the Appeal of

MATHAOTE POTO Appellant

v

REX

J U D G M E N T

Delivered by the Hon. Mr Justice J L Kheola on the
21st day of April, 1986

The appellant was charged before the subordinate court for the district of Quthing with the offence of contravening section 3(a) of the Dangerous Medicine Act No.23 of 1973, in that on the 31st August, 1985 and at or near Tele Border Post in the district of Quthing the appellant unlawfully and intentionally dealt in dagga weighing 5 100 kg without a permit. She pleaded guilty to the charge and was sentenced to six (6) months' imprisonment without the option of a fine. She is appealing to this court against sentence.

The facts of this case are that on the 31st August, 1985, the appellant was arrested at Tele River when she was about to cross into the Republic of South Africa. She was carrying a brown shopping bag. When asked what the bag contained the appellant told the police that it contained dagga which she intended to sell in the Republic of South Africa. The police found out that she had no permit authorizing her to deal in dagga.

/I confirm

I confirm the conviction.

The sentence of six (6) months' imprisonment without the option of a fine has given me some concern. The quantity of dagga found in the possession of the appellant was not large enough to justify a sentence of imprisonment without the option of a fine. In addition to that the appellant is a first offender. A sentence of imprisonment without the option of a fine on a first offender should not be imposed unless the amount of dagga involved is so large that it leaves no doubt that the accused person is a big trader in smuggling dagga.

It has also been pointed out by this court that magistrates should always bear in mind the uniformity of sentences. In all cases where people are convicted of dealing in similar quantities of dagga the sentences imposed by the courts must show some degree of uniformity unless the circumstances of a particular case require that it should be treated differently, such circumstances are the age of the accused, whether or not he or she has any relevant previous convictions. In all the cases in which this court has discouraged magistrates to give the option of a fine, the quantity of dagga was usually large and over one hundred kilograms or several bags of dagga (see Rex v Sehloho and another, 1981(2) L.L.R. 292, R. v. Hlapho, Review Order No 7 of 1979 (unreported), R. v James Mafuso, Review Order No 43 of 1979 (unreported)).

The appellate court is always very reluctant to set aside the sentence of a lower court because sentence is a matter entirely in the discretion of the trial court. However such a discretion must be exercised judicially. Where the sentence imposed by the lower court

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gives a sense of shock or is so severe that a reasonable court would not have imposed it, the appellate court may set it aside. I am of the opinion that the sentence is too severe when one takes into account the amount of dagga found in the possession of the appellant.

The sentence imposed by the court below is quashed. I substitute a sentence of R70.00 or two (2) months' imprisonment.

J.I. KHEOLA
JUDGE

6th May, 1986.

For Appellant - Mr. Ramodibedi

For Respondent - Mr. Mokhobo