

dismissed with costs The order that I would propose is that  
this appeal be dismissed with costs

Signed .. . . .

W.P. SCHUTZ  
President of the Court of Appeal

I agree Signed . . . . .

M W. ODES  
Judge of Appeal

I agree Signed. . . . .

S MILLER  
Judge of Appeal

Delivered ex tempore at Maseru on the 24th day of July, 1986.

For the Appellants Mr Kambule

For the Respondent Mr Beckley SC.

IN THE LESOTHO COURT OF APPEAL

In the matter between -

CARRINGTON MASOABI

Appellant

and

R E X

Respondent

HELD AT MASERU

Coram

SCHUTZ, P  
PLEWMAN, J.A.  
ACKERMANN, J.A.

J U D G M E N T

Plewman, J.A.

When this matter was called we were informed by Mr. Mdhluli who appeared for the State that there were deficiencies in the Record. This, too, was the essential complaint made in the Heads of argument by the Appellant who appeared in person. In an attempt to establish what the precise state of the record is, we were given various explanations as to how and when the record in  
/its present ..

its present state was prepared, including conflicting contentions as to where the fault lay for the state of the record. It is unnecessary to deal with these contentions in this judgment because whatever the facts may be, we find ourselves faced with the situation in which there are serious discrepancies in the record before us - at least in respect that none of the Exhibits handed in in the course of the trial have been re-produced. Nor are the original Exhibits as such available. While I express no view as to the materiality of all these Exhibits (or, indeed, any of these Exhibits), it is clear that the matter cannot proceed and must be postponed to a future session.

What remains to be considered is what Order must be made in relation to the rectification of the record, and whether the Appellant is to remain on Bail pending the hearing of the Matter. It is however to be observed, that this is yet a further example of the waste of judicial time which has been occasioned at this Session by reason of the failure not only of the Registrar's officials adequately to preserve tapes on which proceedings have been recorded and to presume the Exhibits handed in, and thereafter timeously to prepare records, and also the almost inexplicable failure of persons wishing to appeal to ensure on their part that the records are properly prepared.

/In the ...

In the present case the existing records, (which is manifestly incomplete) includes a certificate that the record is a checked and correct record of the case'. This can hardly be proper. There appears to be some doubt, also, as to whether or not it is a record reconstructed from the Judge's notes. It seems that the tapes may now be available. It is common cause that the Exhibits have not been reproduced, and it is said that they "may be found," and that if they are not, secondary evidence could be obtained which will enable them to be reconstructed. In all these circumstances, the Order which is made is that the parties are to meet after the Registrar's Office has produced a record, in whatever manner this can be done. If the tapes are available there should be no difficulty. If the Appellant and the representative of the Crown are not able, after invoking the available additional sources such as the Judge's notes and the notes of Counsel, to agree as to the correctness of the Record, then they are required in accordance with the procedure sanctioned in the judgment of this Court in the case of Phasumane and Others (CRI/A/2/85) to prepare a written report as to the extent of the differences between them, stating the reasons why they have been unable to reach agreement, inasmuch as the Appellant, though appearing in person, is trained as an Attorney - the Appellant should have no difficulty in complying with this direction. The parties are directed to complete these matters by the 11th of

/May, . .

May, 1990 - and would like that date carefully noted!

There remains the question of bail. No reasons have been advanced by the State as to why the Appellant's bail should not be extended, and I will therefore extend it. The matter is then postponed to the next session of this Court. A proper record is to be prepared in accordance with the directions given, and bail is ordered to stand pending the hearing of the Appeal, and it is ordered that Bail will stand on the conditions as they previously applied.

(Signed)

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C. PLEWMAN  
JUDGE OF APPEAL

I agree

(Signed)

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W. P. SCHUTZ  
PRESIDENT

I agree

(Signed)

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L. W. H. ACKERMANN  
JUDGE OF APPEAL

For the Appellant . In Person

For the Respondent Mr. Mdhluli