

IN THE HIGH COURT OF LESOTHO

In the Appeal of :

PAKI MPHUTLANE

Appellant

V

R E X

Respondent

J U D G M E N T

Delivered by the Hon. Mr. Justice M.L. Lehohla
on the 1st day of September, 1989.

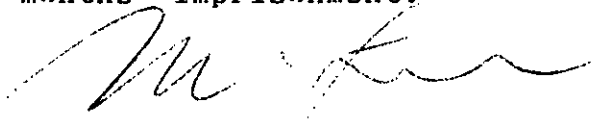
In this matter the appellant has very properly withdrawn his appeal against conviction. He however proceeds with the appeal against sentence only. The ground he is relying on is that the learned magistrate didn't take into account his personal circumstances. Indeed this complaint is substantiated by absence of any reference to the appellant's personal circumstances from the record or judgment itself.

It would appear in the main that it wasn't established how much he earns per month or any such things with a view to finding what suitable sentence could be imposed. The accused was convicted of an assault with intent to do grievous bodily harm on his wife, committed prior to the coming into effect of the minimum penalties' order of 1988. Medical evidence showed that the assault was savage. Hence the court below can scarcely be faulted for adopting the attitude that severe sentence was deserving. It has, of course, been repeatedly said that the fact that a man is a first offender doesn't per se entitle

/him

him to a light treatment. But it has also, on the other hand, been stated on a number of times that sentencing is a different matter altogether from the conduct of the trial proceedings preceding it, and; in that regard therefore the court goes into a completely new procedure; and one of the things to be considered for purposes of sentencing is the accused's personal circumstances. I call in mind the appeal of Phohlo vs Rex CRI/A/22/86 (unreported) among others where this was considered by this Court and on the basis of that consideration, I feel that this Court is at large to investigate even at this stage the appellant's personal circumstances.

I have been told from the bar that he makes about M600 per month. I have taken into consideration the fact that this man is a first offender and therefore is entitled to a second chance to reform. It is also worth mentioning that, giving a man chance has recently been popularised as is catching on as is the case with regard to our neighbouring states. In this view therefore the sentence imposed by the learned magistrate is set aside and in its place is substituted by one of M300 or 6 months' imprisonment.



J U D G E.

1st September, 1989.

For Appellant : Mr. Hlaoli
For Crown : Mr. Mokhobo.