CRI/A/84/89

IN THE HIGH COURT OF LESOTHO

In the Appeal of :

MATHIBELA BOROTHO 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 6th day of November, 1989.

The appellant was convicted of contravention of section 51 of the Road Traffic Act No. 8 of 1981 before the Magistrate for the district of Leribe. The accused then pleaded not guilty to both the main and the alternative charges; and after the evidence was led the appellant was found guilty as charged and sentenced to five years' imprisonment.

He appealed to this Court against conviction. There were also submissions in the proceedings before sentence. The crown very properly submitted that the charge sheet was wrongly framed in that the charges should have consisted of two separate counts and not alternative counts since there are two distinct statutory crimes which were created by the legislature. The crown further considered that the magistrate erred in delivering a blanket judgment where it was not specified on which count the accused was found guilty.

The crown further conceded that the conviction on the count under section 10, Subsection 2 is improper

/in

in that P.W.2 gave evidence to the effect that the number E. 2036 was lawfully allocated by a proper registration authority to Mphetha Khitsane P.W.1 for a Toyota Hiace. The crown further drew attention in regard to the charge under section 15(1) that P.W.4 gave evidence with regard to a vehicle bearing registration No: OM 27904 and not E 2036.

The crown observed that it wasn't cler which vehicle was actually before court. The crown consequently submitted that there was no way that the appellant could have known that the engine and the Chassis numbers tallied with those on the Blue-Card which belongs to P.W.1. As to the sentence, the crown submitted that even if the conviction was proper, the magistrate clearly exceeded his statutory powers by imposing the sentence of five years' imprisonment. The penal provisions under both sections 10 and 14 allow the magistrate to impose a sentence of M2,000 and 2 years' imprisonment.

From the charge sheet it is clear that the crimes were committed around 7th of August 1987 which was before the date of promulgation and commencement of the Road Traffic Amendment Order 1987 which was the 8th of December of that year. It was argued on behalf of the appellant that the magistrate erred in treating both the main and alternative charges as if they were one and the same thing; and it was argued on behalf of the appellant that this constituted a gross form of irregularity and misdirection on the part of the learned magistrate. It was argued for the appellant that the court has a few alternatives either to acquit and discharge the appellant; or to consider the merits of the conviction in the main charge and ignore the conviction in the alternative charge. I was referred to page 7 line 9 of the record.

If only to compound the confusion that is already bristling in the record, one finds in line 9 at page 7 that to a question namely "To which vehicle does this Blue-Card belong?"

/the

the answer was "J.P.S. 076T" with the engine and chassis numbers shown above. There was 2465 in k.g. Blue-Card. The vehicle itself reflected 1465 kg. and seems to belong to D.L. Motsamai of Soweto and it further shows that it had registration number E 0053. It was also argued before me that the magistrate delivered his judgment and that it was an impromtu one, given, I was told, immediately after he had concluded the proceedings and convicted the appellant. I was told that he post-poned the delivery of the sentence to some future date whereupon he glibly outlined the reasons for the judgment and sentence which he had imposed previously. Relying on recent practice of certain branches of this court, the appellant's counsel told me that that is very irregular; and that when he did so, the magistrate, that is three or so days after he had convicted the appellant was functus officio. And that his judgment was an afterthought.

Attention is invited to CRI/A/37/88 Pulumo vs Rex wherein at page 4 the following words appear

> "The learned counsel for the appellant further pointed out that because grounds of appeal were filed on the 25 of August 1987 and judgment only written on 30th August 1987 i.e. five days after the filing of the grounds; then the judgment is an afterthought."

But reference to Subordinate courts proclamation 58 of 1938 section 73(3) shows that any person convicted of any offence by the judgment of any Subordinate court may appeal against such conviction and against any sentence to the High Court. This situation is to be compared with the Subordinate Courts Order of 1988 section 72(3) that replaces the original proclamation. I need but point out that the contents of both sections are the same, and they read :-

> "Any such appeal shall be noted and prosecuted within the period and in the manner prescribed by the Rules."

The relevant rules appear in order number XXXV Rule 1(1) which says

/"an

"an accused person wishing to appeal against any conviction or any sentence in a criminal case shall note his appeal within 14 days after such conviction or sentence by lodging with the Clerk of the Court a written statement setting out clearly and specifically the grounds on which the appeal is based."

Section 3 reads:-

"Upon an appeal being noted the Judicial Officer shall within seven days deliver to the Clerk of the Court the statement in writing - showing

(a) the facts found proved;

(b) the grounds upon which he arrived at any finding of fact specified in the appellant's statement as appealed against; and

(c) his reasons for any ruling of law or as to the admission or rejection of evidence so specified and as appealed against."

In Pulumo above this Court had occasion to observe that, to understand the meaning of the word "statement" as used in subsection (3) where the Judicial Officer is enjoined to deliver one to the Clerk of the Court, subsection (5) has reference. And that the word "statement" is rendered in that subsection as meaning "the statement of reasons for judgment" and that there is no difference between judgment and the statement of reasons for judgment. It would seem therefore that nothing binds the magistrate to give reasons for his decision before an appeal is noted within the period specified in the rules. I also had occasion to refer to a parallel drawn by Lord Denning between procedures in the Tribunal boards and procedures in the Magistrates' Courts. At page 84 of his book the Due Process of Law, Lord Denning himself says:-

"Accepting that the board had to do all this when they come to give their decision, the question arises, are they bound to give their reasons? I think not. Magistrates are not bound to give their reasons. See R. vs Northumberland Compensation Appeal Tribunal, ex parte Shaw (1952) I.K.B. 338 at 352."

/I

Regard being had to the fact that a Subordinate Court is a creature of statute, it can hardly be faulted for abiding by the provisions of the statute as set out in the proclamation and the Subordinate Courts Order 1988 section 72(3) referred to above.

It is to be observed that the proclamation on which this Court has for a long time been relying is a product of British Laws having been bequeathed to this country before it attained its independence and that statute is on all fours with the decision that was given in the authority just referred to by the then Master of the Rolls Lord Denning himself.

I am satisfied therefore that the magistrate is not obliged to give any reasons for his decision before the prescribed terms. For practical purposes it is advisable to give reasons for judgment as soon as possible after the conclusion of the proceedings. But I think that the argument for following the strict letter of the statute has merit, because, - and here I am fortified by experience - a good number of cases come before the magistrates and are to be disposed of as quickly as possible. And if in each and every one of those the magistrate is to sit down and write his reasons then by the end of the year he will have done less than a 1/4 of the work that normally would have come before him and been finished. As the crown has properly submitted, it doesn't seem that there are any good grounds for having convicted the appellant on both counts. On that basis therefore the conviction and sentence are set aside and the appeal is upheld.

As to the disposal of the vehicle, the subject matter of these proceedings, I order that the disposal of the article be treated under the provisions of section 53 of the C.P. & E.

J U D G E.

6th November, 1989.

For Appellant : Mr. Monaphathi
For Respondent : Mr. Mokhobo.