CRI/A/7A/88

IN THE HIGH COURT OF LESOTHO

In the matter between:

HABOFANOE MOEPI

v

REX

Before the Honourable the Chief Justice Mr. Justice B.P. Cullinan on the 24th day of February, 1989.

For the Crown : Mr. G.S. Mdhluli, Director of Public Prosecutions
For the Appellant: Mr. M.M. Ramodibeli

JUDGMENT

The appellant was convicted of theft by the Subordinate Court at Leribe and was sentenced to 18 months' imprisonment. He was released on bail.

The appellant pleaded guilty. He agreed with a statement of facts made by the public prosecutor. It disclosed that the appellant and complainant arrived in the same vehicle in Hlotse. They had some drink together, purchased by the complainant. They then proceeded to a butchery. While the complainant entered the butchery, the appellant remained outside, carrying the complainant's bag which contained inter alia M1005 in cash and a ladies' dress. On emerging from the butchery

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the complainant found that the appellant had "disappeared" (the word used by the prosecutor) with the bag and contents. The complainant searched for and ultimately found the appellant in a house in Hlotse. The complainant took the appellant to the nearby Charge Office, where upon being searched by the police, the appellant was found to possess M120. The following day the appellant led the police to a place where the complainant's bag was found. A further amount of M77.75 was found in shoes belonging to appellant, in a house where appellant worked. The particular dress was also found, but the statement of facts does not indicate where it was found.

Learned Counsel for the appellant Mr. Ramodibeli submits that the statement of facts did not indicate that the complainant had not allowed the appellant to retain possession of his goods, and so the plea of guilty was equivocal. There is no doubt that the statement of facts could have been far more explicit, and here I consider the learned trial Magistrate should have requested the public prosecutor to clarify the issues. Nonetheles., the statement of facts dislosed that the appellant had "disappeared" and that the complainant searched for him and thereafter took him to the Charge Office. While the finding of cash upon the appellant, and even hidden in a pair of shoes, is not conclusive, the fact that he led the police to where the bag was found, clearly indicates guilty knowledge on his part. As I see it therefore, the only reasonable inference flowing from the statement of facts is that the

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appellant took away the complainant's propert, without his permission with the intent of permanently depriving the owner thereof. The plea was therefore unequivocal. The appeal against conviction is therefore dismissed.

In passing, I observe that the learned trial Magistrate subsequently wrote a judgment in the matter. I have said a number of times that a magistrate is simply functus officio when the trial has concluded. In any event, section 240 of the Criminal Procedure & Evidence Act obviates the necessity for any reasoned judgment as such, once an accused upon a plea of guilty has agreed with the statement of facts. The learned trial Magistrate's judgment has therefore played no part in this appeal. Neither has his "Reply to Appellant's Grounds of Appeal". The Court of first instance is not called upon to consider, much less to reply to any grounds of appeal against its decisions. Quite clearly it is unseemly for any judicial officer to in effect seek to justify his decisions, unless called upon to do so by the appellate Court. Again, the Court of first instance is simply functus officio in the matter. Mr. Ramodibeli has however drawn my attention to a statement by the learned trial Magistrate, namely that

> "I have known of no Court which would give reasons why it sentences the accused."

That is an unfortunate misdirection. It is trite that a Court must give its reasons: the authority is legion. To fail to give reasons, as was

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the case here, is a misdirection by way of omission and this Court is therefore at large in the matter of sentence. The appellant was a first offender who pleaded guilty. Nonetheless a relatively large amount of money was involved. The learned trial Magistrate ordered the return of the money found, to the complainant, who nonetheless was at a loss of approximate M800. In all the circumstances the appeal against sentence is allowed. The sentence of the Court below is set aside and there is substituted therefor a sentence of one year's imprisonment. I order however that the operation of the sentence be suspended for a period of one year from the date of this order, on condition that within that period the appellant pay as compensation to the complainant the sum of M800.

Delivered at Maseru This 24th Day of February, 1989.

B. P. CULLINAN
CHIEF JUSTICE