

IN THE HIGH COURT OF LESOTHO

In the matter between:

REX

v

MAKOENEHELO MAINE
NTHABELENG MOLOLO

Before the Honourable the Chief Justice Mr. Justice B.P. Cullinan on the 12th day of May, 1989.

For the Crown : Mr. G.S. Mdhuli, Director of Public Prosecutions

JUDGMENT

The two female accused persons were convicted of common theft by the Subordinate Court for the Mafeteng District.

One witness gave evidence for the Crown, that is, the complainant. She testified that she departed from her house, leaving her 18-year-old sister-in-law, the first accused, in the house, where she (the complainant) had secreted M600, the whereabouts of which was known to the first accused. On her return she found that the first

accused had left the house and the M600 had disappeared. Subsequently she met the first accused. The latter made some explanation to her, and handed over M70 and a pair of shoes. The first accused led the complainant, accompanied by the Chief, to the house of the second accused. The latter had apparently recently purchased some household goods and clothing.

That was the only evidence against either accused, both of whom remained silent in their defence. The Director of Public Prosecutions Mr. Mdhluli very properly submits that there was no case whatever against the second accused. I entirely agree.

As to the first accused, Mr. Mdhluli submits that an inference of guilt could certainly be drawn, but that on the evidence before the Court that was not the only reasonable inference. I again agree. As I see it, a prima facie case was not established by the prosecution against either accused and they should not have been put on their defence.

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In passing I observe that the learned trial Magistrate imposed a sentence of four years' imprisonment on each accused. The sentence comes to me with a sense of shock as being manifestly excessive. Both accused persons were first offenders. They were aged but 18 and 20 years respectively. Further, the first accused was recorded on the charge sheet as being aged "about" 18 years. As I see it, the learned trial Magistrate should have been put on enquiry as to the age of the first accused, particularly where she contemplated imposing a sentence of imprisonment, as of course under the provisions of section 26(1) of the Children's Protection Act, 1980, no child may be punished by imprisonment.

I need not enquire into the validity of the sentence imposed on the first accused in view of the uncertainty as to her age. I say no more than that it was in the circumstances incumbent upon the learned trial Magistrate to conduct an enquiry and make a determination as to such age.

In any event, for the reasons already stated,

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there being insufficient evidence against either accused,
the convictions and sentences imposed by the Court below
are set aside and both accused persons are acquitted.

Delivered at Maseru on the 12th Day of May, 1989.



(B.P. CULLINAN)
CHIEF JUSTICE