

IN THE HIGH COURT OF LESOTHO

In the Appeal of :

MAMPOI MAJARA

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 14th day of August, 1989.

The appellant appeared before the magistrate's Court in Maseru, on a charge of forgery.

It was alleged in the charge sheet that for a period falling between December 1984 and September 1985 the appellant while working at the Treasury did unlawfully, falsely and with intent to defraud the Government of Lesotho, forge an instrument in writing, namely the pay sheets covering the above named period, by including the names

1. L. Matsoso
2. M. Rankae
3. M. Matsoso
4. J. Matsoso

in the pay sheets and forging the supposed signatures to indicate that the respective owners of the names reflected received the specified wages while in fact no monies were paid to nor received by owners of the names shown during the period in question.

The appellant was convicted by the court below and sentenced to an imprisonment term of 12 months suspended

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for 3 years on conditions set out in the judgment of that court.

The magistrate also ordered that the accused should pay back to the Treasury the money i.e. M2268.28 alleged to have been paid by the appellant to fictitious persons. The order went further to say she should pay this by M200.00 monthly instalments with effect from 30.1.1987.

The accused noted an appeal to this Court on the following grounds:-

1. The learned magistrate erred in placing the burden of proof on the accused to satisfy the court as to the existence or whereabouts of L. Matsoso, J. Rankae, M. Matsoso and J. Matsoso in the light of the finding by the learned magistrate that the Crown has not shown that Malineo Jacenta Matsoso (P.W.2) and Lehlohonolo Matsoso (P.W.4) are M. Matsoso and L. Matsoso mentioned in the charge sheet.
2. The learned magistrate erred in finding the accused guilty of forgery of the signatures appearing against the names of L. Matsoso, M. Rankae, M. Matsoso and J. Matsoso in the absence of the finding that M. Matsoso and L. Matsoso were Malineo Jacenta Matsoso and Lehlohonolo Matsoso respectively,
3. The learned magistrate erred in holding that the accused should have been acquainted with all the persons she was paying taking into account the number of persons she was paying from various Ministries.
4. The learned magistrate should have held that the Crown has not proved beyond doubt that the names L. Matsoso, M. Rankae, M. Matsoso and J. Matsoso have not been supplied to the accused by the office of the personnel and the learned magistrate should have given the benefit of the doubt to the accused.
5. The learned magistrate erred in holding that the pay sheets were forged in as much as the insertion of the names of L. Matsoso, M. Rankae, M. Matsoso and J. Matsoso on otherwise proper pay sheets in respect of the names of other payees does not make the whole pay sheet a forgery. The learned magistrate ought to have held that a document is not false merely because it contains false statements.

6. The learned magistrate ought to have held that if L. Matsoso, M. Rankae, M. Matsoso and J. Matsoso were fictitious persons the accused could therefore not be guilty of forging signatures of fictitious persons and the best conviction could have been guilty of theft or fraud.
7. The conviction is against the weight of evidence.

The appellant is employed by the Lesotho Government as an accounts clerk in the Treasury.

It appears that for the period covered by the charge sheet her work involved effecting payments to daily paid employees.

By their nature this category of employees are birds of the passage who peep and go. It is thus imposing an unreasonable burden on the accounts' clerk to expect her to know every one of them even if only facially. They come from various Ministries and they do not come into contact with the accounts' clerk daily. Even those who remain for considerable periods in the employ of the Lesotho Government do only come into contact with her on pay days which occur once a month.

In order for this accounts' clerk to know who to pay she is supplied with lists of names emanating from personnel officers from various ministries.

In the instant case the appellant was supplied with lists of names from the office of P.W.3 'Mamohlakana Molapo.

P.W.3 testified before the court below that at the time she was called to throw some light as to discrepancies which resulted in the payment of some alleged fictitious persons, she was no longer working as Principal Personnel Officer 11 as the head of that department.

P.W.3 denied any knowledge, though, of three names of what turned out to be fictitious persons brought to her attention.

/She

She knew the name of Lehlohonolo Matsoso only. But it was shown Lehlohonolo did not receive the money purportedly paid out in his name. In any event he stopped being paid as a daily paid employee in October 1984 when he joined permanent staff in the Ministry of Justice where he had since been paid by cheque.

P.W.3 testified that her office supplies lists of names of daily paid employees to the office of the appellant who also receives written instructions to effect payments.

It appears to be the regrettable weakness in the system employed that the office of P.W.3 does not keep a corresponding copy of the names supplied to the office of the appellant. Such a record is supposedly kept by the appellant. For all it is worth, while it is plausible that instructions to pay the listed employees are in written form, the instruction to terminate employment of the people listed is given either verbally or by use of a telephone. It is possible to either intentionally or accidentally breach these instructions if they are not written.

The crown was not able to say if having used the information reflected in the lists the accused in preparing the pay sheets which contain the names of so-called fictitious people has any obligation to keep such lists and not either to destroy them or dispose of them in any manner she deems fit afterwards.

In my judgment the greatest weakness in this system consists in the fact that the office supplying the appellant with these lists does not keep corresponding lists nor does it require her to initial such copies while she retains the originals that require her further processing.

It is not unlikely therefore that anybody having wind of the fact that the appellant is in possession of

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names dependent on which he would be entitled to receive money if he signs across any of those names appearing in the appellant's wage sheets, could do so and get away with it. Hence the observation that the measure of its strength is the weakest link in a chain.

It has often been held that where the court in order to arrive at a conclusion it has to make inferences, the inference so drawn must be the only one in the circumstances. It appears that this requirement cannot be satisfied if possibilities exist that someone else might have supplied the list that contained fictitious names or that people who knew of the existence of the fictitious so supplied urged those working in league with them to go and claim the moneys from the appellant and actually append fictitious signatures opposite fictitious names appearing on the wage sheets.

Another test is whether the appellant's claim to benefit of doubt is consistent with her innocence and not outweighed by proved facts of the case, or whether it is based on solid foundation therefore not on sheer fanciful considerations and mere speculation.

The facts of this case show that her claim to benefit of doubt consists with the crown's failure to produce a list corresponding with the one allegedly furnished to the appellant. If such a list had been produced, no doubt the appellant would be hard put to it to explain the source from which she obtained additional names to those supplied by Personnel Office. It would be advisable that the receiver of the list in appellant's office should always initial both the original and the corresponding copy kept by personnel office. Otherwise these loopholes in the system of financial management in the Government will always be taken advantage of by unscrupulous thieves.

It seems to me therefore that although strong and reasonable suspicion exists that the appellant is the culprit who forged the names and pocketed the proceeds payable to non-existent persons the evidence upon which she was convicted was not conclusive. Without a  
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corresponding list it is difficult to check accused's story against that of the prosecution. She says she received the list of payees' names from personnel office. The personnel office does not produce the copy of the list it provided her with. She does not have to prove her innocence. The onus is on the crown to establish her guilt. This it has not done.

It is our law that anybody facing any criminal charge must have the case against him or her proved beyond a reasonable doubt. It is not unreasonable to entertain the view that someone else and not necessarily the accused exploited or could exploit the weakness reflected in the financial procedures adopted both in the accused's office and that of the Principal Personnel Officer. May it be noted that I do not agree with ground 5 of appeal: Any tampering (in writing or by erasure) with contents of an instrument for purposes of deceit renders the whole document forged.

The case itself shows lack of proper supervision and appalling laxity in the management of finances in the respective offices.

It was not proved that the forging of the fictitious signatures was effected by the appellant. Yet, if there was a list kept by the crown serving as a replica of the one forwarded to the appellant, then by inference the appellant would reasonably be required to account for the forgery made manifest by what purport to be signatures of persons answering to the names appearing on her wage sheets. Her failure to account in that event would justify a conclusion that she forged the signatures in order to make it appear as if signatories received the moneys which she and no one else pocketed.

The fact that what purport to be Rankae's and Matsoso's signatures differ from time to time on occasions they appear on appellant's wage sheets is of no consequence because, short of satisfactory proof that the signatures were feigned by the appellant nothing can link

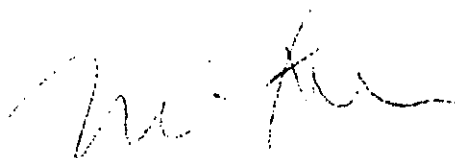
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her with their forgery.

At page 9 Morolong P.W.1 whose evidence was largely satisfactory in so far as he mounted the initial investigation, and appears to be familiar with the appellant's handwriting, conceded the point made in the above paragraph and also conceded under cross-examination that the fact that there was the name Matsoso and his or her purported signature did not mean that a person by that name never came to sign for the money.

He conceded further that there are no frequent "feed-backs" between the paying office, the personnel office and his own office whose business it is to check and see to it that no fictitious persons are paid out of public funds. He did not know if his predecessor made any such checks. It is thus abundantly clear that his office failed therefore to follow the financial regulations properly. He was man enough, though, to concede this too.

The accused was therefore given benefit of doubt, acquitted and discharged.



J U D G E.

14th August, 1989.

For Appellant : Mr. Matsau  
For Respondent : Mr. Thetsane.