

IN THE HIGH COURT OF LESOTHO

In the Appeal of :

RAMAKOLOI RAMOHAPI

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 18th day of August, 1989.

The appellant has appealed to this Court against a conviction for contempt pursuant to which the learned magistrate had imposed a sentence of three months' imprisonment.

The contempt proceedings appeared to have arisen from appellant's failure to honour his undertaking to pay a total of M200 consisting of M100 on each of the two counts arising from traffic offences.

The appellant had been given an opportunity to go and collect the money for the fine imposed in October but failed to do so. Consequently contempt proceedings were instituted against him and culminated in his being sentenced to three months' imprisonment without option of a fine on 31-12-86.

I was informed from the bar that the appellant had paid the fine before contempt proceedings took place. I am also informed that he informed the court of this.

But nothing on the record bears this out. In any

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case nothing turns on this aspect of the matter as it is not the basis of the appeal.

The appeal is based on the fact that the court below erred in law in holding that appellant's failure to pay a fine amounted to contempt. Further that 3 months' imprisonment without option of a fine evokes a sense of shock.

The last ground of appeal is based on the ground that the appellant had pleaded guilty. This should have gone a long way towards mitigating the sentence. Further the contempt occurred privately between the learned magistrate and the public prosecutor concerned. In any event where contempt is held to be of so serious a nature as to merit custodial sentence such sentence is more often than not wholly suspended.

Mr. Sakoane for the crown submitted that there is no basis on the record for the submission that the appellant had paid the fine in respect of the traffic offence with which he had been charged. He very properly conceded that provision of S. 316(1) of the C P & E should have been invoked where an accused person given a penalty of a fine fails to pay it instead of committing him for contempt.

S. 316(1) reads:

"If the conditions of any order made, or recognition entered into, under section 314 or 315 are alleged to have not been fulfilled, the public prosecutor may, without any notice to the convicted person, apply to any Subordinate Court for a warrant for his arrest for purposes of bringing him before the court to show cause why he should not undergo the sentence which has been, or may be, lawfully imposed."

See also Ss. 315 and 316 in toto.

While I agree that the learned magistrate should have invoked the provisions of S. 316, I do however think that S. 314(2) has even more relevance. It reads:

/"Whenever

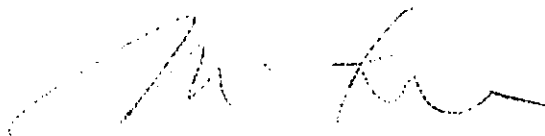
"Whenever a court has imposed upon any person a fine without an alternative sentence of imprisonment and the fine is not paid the court which passed sentence on that person may issue a warrant directing that he be arrested and brought before the court, which may thereupon sentence him to such term of imprisonment as could have been imposed upon him as an alternative punishment, in terms of sub-section (1)."

As pointed out earlier the appellant had not been given any alternative form of punishment to the fine imposed. In default of him paying the fine the above section says he should have been brought before the court for purposes of imposing an alternative sentence of imprisonment. It was wrong therefore to have arrested him for purposes of laying a contempt charge against him and proceeding with the trial on that basis.

The record does not say within what period or on or before what date or time the appellant was required to pay the fine. Can the date be inferred? I think not.

If the case for the crown in the court below was that the appellant has committed contempt by defaulting in his payment of the fine then the onus of showing the exact date when the payment was to be effected rested on the crown. For this charge to have stood in the circumstances of this case time was clearly of the essence. In my view the crown has not discharged that onus either.

The appeal succeeds.



J U D G E.

18th August, 1989.

For Appellant : Mr. Nathane
For Respondent : Mr. Qhomane.