CRI/A/18/89

IN THE HIGH COURT OF LESOTHO

In the Appeal of :

MOSELANTJA MOHOLA Appellant

v

R E X Respondent

REASONS FOR JUDGMENT

Filed by the Hon. Mr. Justice B.K. Molai

on the 7th day of August, 1990.

This appeal has already been dismissed for the following reasons:

The appellant appeared before a magistrate with First Class powers charged with two counts of contravention of Sec.4(a) of the Liquor Commission Order No.12 of 1986 and contravention of Section 3(a) of Dangerous Medicines Act No. 21 of 1973. The body of the charge sheet disclosed the following allegations:

Count I : "Upon or about 28th March, 1987 and at or near Sixondo, in the district of Quthing, the said accused did unlawfully import into Lesotho liquor products to wit; 143 Long Tom cans of beer without permit and thereby commit an offence."

2/ Count II ....

Count II "Upon or about 28th March, 1987 and at or near Sixondo, the said accused did unlawfully deal in a prohibited medicine or plant from which such medicine can be manufactured, to wit: 17.8 kg of dagga without permit and thereby commit an offence."

When the charges were put to her the appellant pleaded guilty. The public prosecutor accepted the plea of guilty tendered by the appellant and the provisions of S.240(1)(b) of the Criminal Procedure and Evidence Act, 1981 were invoked. At the close of the trial the learned magistrate returned a verdict of guilty as charged on both counts. On count I the appellant was sentensed to six (6) months imprisonment the whole of which was suspended for three (3) years on conditions. A sentence of 18 months imprisonment was imposed on Count II.

The appeal was against only the sentence on a number of grounds which could, however, be summed up in that it was too harsh.

The facts, and these were admitted as correct by the appellant, disclosed that prior to 28th March, 1987 she had imported a large quantity of beer cans into Lesotho from the district of Transkei in the Republic of South Africa. On the day in question, 28th March, 1987 members of the Royal Lesotho Mounted Police carried out a house to house search in the appellant's home village, Sixondo. In the course of the search they

found 143 Long Tom cans of beer and 1 1/4 bag of dagga inside the appellant's house. She produced no permits authorising her to import the cans of beer and possess the dagga.

Consequently the police officers took possession of the cans of beer and the dagga. The dagga was subsequently weighed and found to weigh 17.8 kg. The appellant was cautioned and charged as aforesaid.

After considering the evidence, the trial magistrate returned a verdict of guilty as charged, on both counts, and correctly so, in my opinion. Indeed, the appellant herself lodged no appeal against her convictions. As it has been stated earlier, the appeal was only against the sentence. It is, however, trite law that the question of sentence is pre-eminantly a matter for the trial court's descretion which must always be exercised judicially. Unless it can be shown that in passing sentence the trial court has misdirected itself or imposed a sentence that is so excessive as to cause a sense of shock a superior court cannot properly interfere with the sentence.

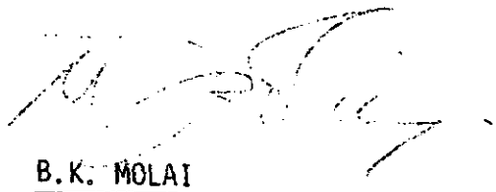
In the present case I was not convinced that the sentences imposed by the trial court were excessive. In Count I the whole sentence of 6 months imprisonment was suspended. In court II a sentence of 18 months imprisonment for a person found to have been dealing in dagga was, if anything, sinning on the side of leniency.

4/ It certainly .....

It certainly did not cause me a sense of shock.

Regard being had to the fact that the trial magistrate who had First Class powers sentenced the appellant to serve a term of only 18 months imprisonment in Count II I was convinced that the personal factors raised in mitigation were properly considered. The magistrate could not, therefore, be said to have misdirected himself in sentencing the appellant.

By and large I was satisfied that the appeal ought not to succeed and I accordingly dismissed it.



B.K. MOLAI
JUDGE

7th August, 1990.

For Appellant : Mr. Ramolibeli

For Respondent : Mr. Sakoane.

The workers are not prepared to obey orders of such employees on the ground that their orders are not lawful. I am of the view that the applicant and its members have totally misconstrued the provisions of section 28A of the Employment Act 1967. The certificates of employment issued to supervisors who come from outside Lesotho have nothing to do with the employees of the first respondent who are under the supervision of such foreigners. The orders given by such foreigners can be disregarded by workers only if they are unlawful in the sense that they are outside the terms of employment of the workers or to any law or regulation in force in the country. The mere fact that such foreigners have no certificates of employment cannot make their orders unlawful. If the applicant is unhappy about the employees of the first respondent who have no certificates of work, all it can do is to report them to the appropriate authorities so that they can be prosecuted under subsection (6) of section 28A of the Employment Act 1967.

It was submitted on behalf of the applicant that the workers were not asked if they associated themselves with the strike. I am of the view that this submission is not sound. The workers referred to are members of the applicant who had meetings at which it was agreed that a strike action should be taken. The applicant represented all its members and informed the management of the first respondent that the workers would go on strike on the 15th June, 1990 and this is exactly what they did.

In the result the application is dismissed with costs.

J.L. KHEOLA
JUDGE

3rd July, 1990.

For the Applicant - Mr. Rakuoane
For 1st and 2nd Respondents - Mr. Moiloa.