

IN THE HIGH COURT OF LESOTHO

In the matter of :

R E X

VS

LETSIE MOLAPO

J U D G M E N T

Delivered by the Hon. Mr. Justice M.L. Lehohla
on the 11th day of September, 1990.

In this matter the accused has been committed by the court below for sentence to the High Court. He was tried by the Resident Magistrate of Leribe, where he pleaded guilty and accordingly a plea of guilty was entered by that court.

The outline of the case having been presented to the court by the prosecutor of that court, and the accused having admitted the facts as being in keeping with his knowledge of events, I have been told today in an alternative argument by the defence counsel that the plea of guilty that was entered was not truly or necessarily a plea of guilty. The argument advanced being that he was intimidated.

In a counter argument the crown has submitted that on the record there is nothing to reveal that the accused was at all intimidated in the court where he appeared. It was

/on

on the score of further arguments submitted that the defence urged the court to postpone this matter so that material can be gathered, perhaps to persuade the court, that there was in fact intimidation or at least that the plea that was tendered by the accused was not accurate. Meantime the defence urges further that the accused should be released on bail pending the hearing.

The crown objects to this application and these submissions. As stated in the case or Review Order No. 4 of 1990 Rex vs Tsolo Mtholo - the accused in that case had appeared before the magistrate of first class powers charged with the crime of robbery. He was found guilty by the magistrate in that case and committed for sentence by this court in terms of section 293 of the C.P. & E. 1981.

The learned Judge dealing with that review focussed his attention on the question of the jurisdiction in the matter of punishment of various classes of magistrates as set out in section 61 of the Subordinate Court's order 1988. Suffice it to say the crime of robbery carries a minimum of ten years' imprisonment.

The accused was tried by a Resident Magistrate. He does not have the jurisdiction. He hasn't got sentencing powers extending to ten years' imprisonment. Those powers in the Subordinate Court are confined to the Chief Magistrate alone. It was for this reason that the learned Judge in Tsolo Mtholo (above) decided that because the magistrate who had tried the accused in that case had no jurisdiction, the matter should be remitted - to the Subordinate court - rather to the Chief Magistrate to be tried de novo.

In that respect that Judge differed in his approach from the Judge who had dealt with the previous case. The previous case was that of Rex vs Lekhotla Ramotso & Another. That was Review Order No. 12 of 1989. In that

case the accused were convicted of robbery by the magistrate of first class. She sentenced them each to six years' imprisonment. The matter was brought on review, and it does appear that the Judge before whom the matter came did not consider whether or not the Subordinate Court had jurisdiction at all to deal with the matter. In his remarks he stated that the accused ought to have been committed for sentence by the High Court. He accordingly set aside the illegal sentence and substituted therefore the mandatory sentences of ten years' imprisonment on each of those accused.

The result in Motholo is in disagreement with the result and the approach adopted in Lekhotla Ramotso.

I, personally, am inclined to the view expressed in Motholo's matter. I find that the magistrate who tried this matter had no jurisdiction, and ought not to have tried it at all. A matter which is committed for sentence by the High Court, should fall within the jurisdiction of the magistrate in question. By that jurisdiction we mean the power not only to convict, but also to impose sentence, and in that case if the magistrate finds that with the limited powers that he or she has he or she is of the opinion that the offence warrants greater sentence than he or she has then and only then can he or she commit the matter to a court which has got higher sentencing powers.

To come to this view I have had regard to the wisdom entailed in the legal adage that the order of things is confounded if everyone preserve not his jurisdiction.

It is for these reasons therefore that I order that the proceedings in the court below should be set aside. I also order that the case be tried de novo by the Chief Magistrate who is the magistrate who has got sufficient powers to try this matter. It would be a different thing if he feels that the jurisdiction that he has warrants higher sentence than the minimum prescribed. In that event he would be entitled and at large to have the matter committed to this Court for sentence.

I wish also to make an additional order, namely that, in view of the time that the accused has spent in jail, and the fact that he had pleaded guilty, if the learned magistrate is going to convict him at all, he should take the length of time spent in jail into account. I would accordingly urge the crown to do all in its power to ensure that the bringing of the accused to court is expedited.



J U D G E.

11th September, 1990.

For Crown : Mr. Qhomane
For Defence : Mr. Ngakane.