

IN THE HIGH COURT OF LESOTHO

In the Application of :

SETENA MOLAHLOEApplicant

and

MAGISTRATE's (Mr. Mapeshoane) T.Y. 1st Respondent
DIRECTOR OF PUBLIC PROSECUTIONS 2nd Respondent

J U D G M E N T

Delivered by the Hon. Mr. Justice B.K. Molai
on the 26th day of February, 1990.

On 26th October, 1989 the applicant herein filed with the Registrar of the High Court a notice of motion in which he moved the court for an order framed in the following terms:

- "(a) The proceedings in C.R. 310/89 be reviewed and corrected or set aside;
- (b) The magistrate dispatch within fourteen (14) days of the receipt of this notice to the Registrar of the above Honourable Court;
- (c) Notify the above applicant that the proceedings in C.R. 310/89 have been dispatched to the Registrar of the High Court for review;
- (d) Granting applicant further and/or alternative relief.
- (e) Costs of suit in the event of opposing this application."

Although they were duly served with the notice of motion the Respondents have intimated no intention to oppose this application. It may be assumed, therefore, that they are prepared to abide by

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whatever decision will be arrived at by the court.

It appears from both the affidavits and the record of proceedings in C.R. 310/89 that on 25th July, 1989 applicant and another person appeared before a magistrate with first class powers and pleaded guilty to a charge of Housebreaking with intent to steal and theft, it being alleged that on or about 22nd July, 1989 and at or near Bela-Bela in the district of Berea they both or either of them did unlawfully and intentionally and with intent to steal break and enter a cafe there situate of Nthoesele Mpo and did unlawfully steal the articles mentioned in the charge sheet, the property or in the lawful possession of Nthoesele Mpo.

The Public Prosecutor accepted the plea of guilty tendered by the applicant and his co-accused. The provisions of S.240(1) (b) of the Criminal Procedure and Evidence Act, 1981 were invoked.

The facts, and these were admitted as correct by the applicant and his co-accused, disclosed that on the previous day, 21st July, 1989 the windows and the doors of the complainant's cafe were properly closed. During the night two people were seen outside the cafe carrying some property. When they were approached those two people wanted to fight. On the process one of them was hit with a stick. They both ran away leaving the property they had been carrying. The property was found to be the articles mentioned in the charge sheet. They were identified by the complainant as part of his property which had been kept in the cafe. The complainant further found that one of the windows of his cafe had been broken open. He had not allowed the appellant and his co-accused or any other person for that matter to break into the cafe and remove property therefrom.

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The applicant and his co-accused were subsequently arrested and taken to Mapoteng police station together with the articles that had been found outside the cafe. They were cautioned and charged as aforementioned.

Where the public prosecutor accepts the plea of guilty and outlines the facts which are admitted as correct by the accused all what the court has to do is to consider the facts to determine whether or not they establish the commission of the offence against which the accused stands charged. Once it has found that the facts do establish the commission of the offence the court is entitled to convict the accused. There is no need to enquire into the question of who has committed the offence. By pleading guilty to the charge the accused is, in effect, saying if it were proved that the offence against which he is charged has been committed then he is the one who has committed it.

In the present case there can be no doubt in my mind that the essential elements of the offence against which the applicant and his co-accused stood charged had been proved by the facts that were outlined by the public prosecutor and accepted by the applicant and his co-accused. By their own pleas of guilty the applicant and his co-accused in effect told the court that if it were found that the offence against which they stood charged had been committed, they were the ones who had committed it. That being so, it had to be accepted that the applicant and his co-accused were correctly found guilty as charged by the trial magistrate.

It has been argued that the applicant is a minor and ought to have been charged under the Children's Protection Act, 1980. In support of this argument a baptismal certificate was annexed to the founding affidavits. It is to be observed, however, that although

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the applicant's names are Setena Molahloe, the baptismal certificate is that of Clement Tumo Molahloe. In my view the baptismal certificate Clement Tumo Molahloe cannot be used as proof of the age of the applicant who is Setena Molahloe. Moreover, according to the charge sheet the age of the applicant is 19 years. He is therefore, not a child within the meaning of that word in the Children's Protection Act, 1980.

Finally, although affidavits are filed in support of the application they all bear no revenue stamps. They are, therefore, not properly before this court. The applicant cannot hope to be granted relief on an application which is supported by affidavits that are not properly before the court.

It is significant that the applicant and his co-accused were convicted and sentenced to 5 years imprisonment by a magistrate with first class powers. Where a magistrate with first class powers convicts and sentences a person to serve a term of 5 years imprisonment the proceedings are surely automatically reviewable. There is, therefore, no need to inundate the High Court with applications of this nature.

By and large, I am not convinced that this application ought to succeed and it is accordingly dismissed.

B. K. MOLAI

JUDGE

26th February, 1990.

For Applicant : Mr. Hlaoli
For Crown : -