

IN THE HIGH COURT OF LESOTHO

In the Matter of :

R E X

v

1. AARON MOTLATSI TS'OSANE
2. KHETHANG MOTSOENE MOTSEARE

J U D G M E N T

Delivered by the Hon. Mr. Justice B.K. Molai
on the 1st day of March, 1990.

The two accused are summarily charged with the crime of Faud alternatively Theft, on the following allegations:

"Upon or about the 30th day of July, 1987 and at or near Maseru in the district of Maseru, the said accused, one or each or all of them did unlawfully and with intent to defraud, misrepresent to the Lesotho Bank that a sum M20,000 had been properly deposited into the savings account of the first accused, the said Aaron Motlatsi Ts'osane, account No. 2000805215 which said account was maintained at the main branch of the Lesotho Bank, and did thereby cause the officials of Lesotho Bank to credit the said account of the first accused with the sum of M20,000 from which funds the first accused be entitled to make withdrawals for his benefit, and the said accused did by means of the said misrepresentation induce the Lesotho Bank, to its loss and prejudice, to allow the said first accused to make withdrawal

2/ from his

from his savings account the sum of M10,00 whereas the said accused, when they made the aforesaid misrepresentation, well knew that no proper and genuine deposit in the sum of M20,000 had been made into the account of the first accused and that he was not entitled to make withdrawals from his savings account utilising the sum of M20,000-00 which had been fraudulently deposited into the savings account of the first accused; and thus the said accused did commit the crime of fraud."

ALTERNATIVELY

"Upon or about the 30th July, 1987 and at or near Maseru in the district of Maseru, the said accused one or each or both of them, did unlawfully and intentionally steal from the Lesotho Bank, the sum of M20,000 the property or in the lawful possession of the Lesotho Bank."

When they were put to them the accused pleaded not guilty to both the main and the alternative charges. Ten (10) witnesses were called to testify in support of the crown case. The defence called no witnesses to testify on behalf of the accused. However, No. 1 accused himself gave evidence on oath in his defence whilst No. 2 accused elected to remain silent and closed his case without saying anything.

At the commencement of this trial only No. 1 accused had a legal representative viz. Mr. T. Mda. No. 2 accused appeared in person and informed the court that he had expected to be represented by Mr. Mda who, however, told the court that the former had not briefed him.

3/ It was

It was only during the cross-examination of P.W.4, 'Mampah' Moorosi, that Mr. Mda told the court that he had been properly briefed and was, therefore, prepared to represent No. 2 accused as well.

It may, perhaps, be convenient to mention at this juncture, that in the course of his evidence P.W.1, Maitse Moloi, started reading from certain documents including a computer report which had clearly not been prepared by him. I was asked by the crown counsel to look at the computer report. I, however, declined to do so and pointed out that I was not prepared to look into documents which were not exhibits or handed in as such by competent witnesses.

In my view, it could never be overemphasised that the task of this court would be made much easier if witnesses were called in some sequence to testify in a trial. To that effect an attempt should be made to call first the witnesses who were competent to hand in exhibits to which other witnesses would refer. Failure to do so, would be bound to end up in the court looking at matters that might turn to be irrelevant with the resultant accusation that its judgment was influenced by such irrelevant matters.

I was, however, subsequently surprised to receive, from the Attorney-General, a letter criticising me, so to speak, for the procedure I have followed on this issue. The letter was copied to the Chief Justice and Mr. Mda, counsel for No.1 accused. No copy was addressed to No. 2 accused who was not legally represented at the time.

4/ I must say

I must say in all the years I have been on the bench I have never seen a judicial officer, who is presiding over a court case, being written an extra-judicial letter criticising the manner in which he is conducting the case. If the Attorney-General were of the opinion that there was anything irregular in the way in which the case was being conducted, he ought to know what remedy was available to the Crown counsel and accordingly advise him. I find it totally unacceptable for a letter of this nature to be addressed to a judicial officer, especially behind the back of No. 2 accused who was, at the time, not legally represented in this case.

Having said that much, I shall now proceed to deal with the merits of the case. Briefly stated, the evidence heard by the court was that of P.W.10, Rubina Osman, who testified that she was employed by the Lesotho Bank and attached to the Savings Account department of the Bank as a savings Account check clerk. On 31st July, 1987 she was checking the posting journal when she found that an amount of M20,000 had been credited into the savings account No. 2000805216 of one Aaron Motlatsi Ts'osane (A1) but there was no voucher covering it. The transaction appeared to have been computerised on 30th July, 1987 by clerk No. 185 in the Data control department of the bank.

P.W.10 then went to enquire from clerk No. 185 as to what had happened to the voucher for the M20,000. She and clerk No. 185 examined the latter's computer print out or "tally" and found that the voucher for the M20,000 had originated from the Foreign Exchange department

of the bank. An enquiry from the accountant in the Foreign Exchange Department of the bank revealed that the debit voucher for the M20,000 was also missing. On checking the computer machine in the savings account department of the Bank, P.W.10 found that an amount of M10,000 had already been withdrawn from the savings account No. 2000805216 on the same day, 31st July, 1987. On the instructions of the Bank Manager, P.W.10 caused the remaining balance in the savings account No. 2000805216 to be freezed immediately and kept in her custody, together with the posting journal which she handed in as exhibit J in her evidence.

In her evidence P.W.5, Thembile Dingiswayo, told the court that since 1986 she had been employed by the Lesotho Bank as a clerk in the Data Department of the Bank. Her official number in the bank was 185. As a clerk in her department her duties included, inter alia, punching (computerising) vouchers made by various departments of the Bank.

On 30th July, 1987 she was punching vouchers from other departments of the bank when No. 2 accused who was one of the clerks in the Foreign Exchange Department of the bank brought to her a bundle of vouchers from that department for punching. When he handed over the vouchers No. 2 accused told her (P.W.5) to punch them quickly as one of his customers was waiting and wanted to withdraw money. In reply P.W.5 told No. 2 accused that she was unable to do so as she was busy punching vouchers she had earlier received from other departments

of the bank. However, No. 2 accused kept on coming to her desk and asking that his vouchers be punched quickly.

When at about 2 p.m. on 30th July, 1987 she broke for lunch, P.W.5 had already started punching the bundle of vouchers brought by No. 2 accused. She left the vouchers together with other vouchers from various departments of the bank and went for her lunch. At about 3 p.m. on the same day, 30th July, 1987, she returned to her desk and continued punching the vouchers she had left when she broke for lunch. She then took all the vouchers she had punched to the photocopying room. After she had photocopied them she kept the photocopies in a cabinet in the data control department and despatched the originals to various departments of their destination.

P.W.5 confirmed the evidence of P.W.10 that on the following day, 31st July, 1987, the latter came to her and enquired about the missing voucher for the amount of M20,000 which had apparently been credited into a certain savings account number on the previous day, 30th July, 1987. P.W.5 then checked her computer print out or "tally" (Exh F) for the previous day, 30th July, 1987 and found that she had, indeed, punched transaction No. 143 by which an amount of M20,000 from manufacturers Hanova Trust Company account No. 9089050001 was to be credited into the savings account No. 2000805216 belonging to No.1 accused. The voucher covering that transaction had originated from the Foreign Exchange Department but was not amongst the original vouchers that were in the possession of P.W.10.

7/ Thinking that

Thinking that she might have inadvertently dispatched it to a wrong department P.W.5 looked for the missing voucher in the current and other departments of the Bank, but all to no avail. She then looked for its copy in the cabinet where photocopies were kept in the Data Control Department. There was no trace of it. She ultimately asked for and inspected all the passbooks currently used to draw out vouchers in the Foreign Exchange Department of the Bank. Again there was no trace of the missing voucher.

In the course of her inspection of the passbooks it came to the notice of P.W.5 that the clerks who used them were each supplied with a set of three (3) passbooks at a time. Whilst the other clerks had submitted all their sets of three (3) passbooks No. 2 accused had submitted only two (Passbooks). P.W.5 pointed out that anomaly to the Foreign Exchange Department.

On the following day, 1st August, 1987, No. 2 accused was off duty but his third passbook (Exh B) was handed over to P.W.5 by the Sub-Accountant, one Mr. Makara who is, however, allegedly furthering his studies abroad and could not, therefore, be called as a witness in this trial. It is significant that P.W.5 was cross-examined by the defence counsel on this point and she told the court (under cross-examination) that according to him, Mr. Makara had found exhibit B hidden in one of No. 2 accused's desk drawers. By cross examining the witness on it the defence counsel made a point which was otherwise inadmissible hearsay, admissible evidence.

8/ It is,

It is, perhaps, convenient to mention at this stage that Exh B is the stationery used in the drawing out of vouchers in the Foreign Exchange Department. It is in the form of a booklet. Each page or voucher thereof is numbered and in triplicate. The first, second and third copies of each voucher are, respectively, pink, yellow and white in colour. In drawing out a voucher, either a pink, or a yellow page is used, depending on whether the transaction is for a debit or credit. The white page is a carbon copy that always remains in exh B together with either the pink or the yellow page, again depending on whether the transaction was for either debit or credit.

On examining Exhibit B, P.W.S noticed that on page 13368 thereof a voucher was drawn out to debit the manufacturer's Hanova Trust Company account No. 9089050001 in the amount of £6034-81 (at the rate of 331.4105) which was the equivalent of M19,999-99 or M20,000, brought to a whole number. The account number to be credited with the amount of M20,000 was not disclosed. However, the whole transaction was cancelled and three copies of voucher 13368 remained in Exh B.

As the transaction on voucher 13368 debiting the manufacturer's Hanova Trust Company Account No. 9089050001 with the equivalence of M20,000, in sterling had been cancelled, P.W.S expected it to be repeated on voucher 13369 or any other subsequent voucher in Exh B. It was not. Instead she noticed that on voucher 13369 only the white copy remained in Exh B i.e. neither the pink nor the yellow copy remained. According to the white carbon copy of voucher 13369 in Exh B, the transaction was crediting a certain account No. 90900052027

with the amount of M62-57. P.W.5, therefore, expected to find the yellow debit page of voucher 13369 remaining in Exh B, together with the white carbon copy. It was not there. She looked for the missing copies i.e. the pink and the yellow copies, of voucher 13369 in all departments of the Bank. She found, in the General Account Department only the credit (yellow) copy (Exh G) but no trace of the debit (Pink) copy of voucher 13369 of Exh B.

In her evidence P.W.4, 'Mampabi Moorosi, told the court that she was the Accountant in the Foreign Exchange Department of the bank. She remembered that on 31st July, 1987 P.W.10 showed her a computer report according to which on 30th July, 1987 an amount of M20,000 had been debited from the manufacturers Hanova Trust Company account No. 9089050001 and credited into the savings account number 2000805216 belonging to No. 1 accused. The relevant voucher which had emanated from the Foreign Exchange Department and ought to have accompanied the transaction was, however missing.

P.W.4 immediately mounted an investigation on the matter by checking through the passbooks used in the Foreign Exchange Department but found no trace of the missing voucher. On the following day she was not on duty. However, later in the day she went to her office to find out if the missing voucher had been traced. It had not. She was however, shown Exh B - a passbook used by No. 2 accused who was one of the clerks in the Foreign Exchange Department and under her general supervision.

10/ P.W.4 confirmed

P.W.4 confirmed the evidence of P.W.5 that the examination of Exh B revealed that at page 13368 thereof a voucher was, on 30th July, 1987, prepared and cancelled debiting the manufacturers Hanova Trust Company Account No. 9089050001 in the sum of £6034-81 at the rate of 331.4105 per £100 - which, converted into Maluti currency amounted to M19,999-99 or M20,000 rounded up to a whole number. According to the message recorded on page 13368 of Exh B the instruction to debit manufacturers Hanova Trust Company Account No. 9089050001 was communicated through a telex dated 29th July, 1987.

P.W.4 further told the court that as she worked with No. 2 accused in the same department she was positive that the handwriting in Exh B, particularly on voucher 13368 thereof, was that of No. 2 accused. She too testified that as the transaction on voucher 13368 had been cancelled she expected No. 2 accused to have repeated it on the following voucher 13369 of Exh B. The transaction was, however, not repeated thereon or any other subsequent vouchers.

According to P.W.4 the procedure followed in her department was that every telex message received was photocopied before it could be handed to the clerks for action. The photocopies of such telexes were kept in a file in the Foreign Exchange Department to maintain a record. After she had found that according to voucher 13368 in exh B the instruction to debit manufacturers Hanova Trust Company Account No. 9089050001 with the equivalent of M20,000 was by a telex, P.W.4 went to look for a copy of the telex message in the telex room. No such telex copy could be found.

11/ She then

She then waited for the arrival of the monthly statement (Exh A) from Manufacturers Hanova Trust Company to see if Lesotho Bank were, indeed, credited with the amount of £6034.81. When it eventually arrived the statement reflected no such transaction.

P. W. 4 confirmed the evidence of P.W.10 that on the instructions of the Bank Manager the funds in No. 1 accused's savings account No. 2000805216 from which an amount of M10,000 had already been withdrawn were frozen.

In her testimony P.W.8, Kamohelo Mahoane, told the court that in July, 1987 she was a clerk attached to the inquiry section of the savings account department of the bank. As such her duties included making entries in the customers' savings account books i.e. crediting customers' savings account books and up dating them. She recalled that on 31st July, 1987 No. 1 accused came to her counter and handed over his savings account book asking her to check if some money had been deposited into his account No. 2000805216. P.W.8 checked on the computer and found that No. 1 accused' savings account had, indeed, been credited with the amount of M20,000 on the previous day, 30th July, 1987. When she asked him where the funds came from, No. 1 accused replied that he was, in fact expecting money from two sources that he was unable to disclose. However, as she was satisfied, from the computer screen that No. 1 accused's account had been credited with the M20,000, P.W.8 up dated the savings account book by making an entry of the M20,000.00 and the balance became M20,098. She handed the savings account book back to No. 1 accused who then left her counter.

In her evidence, P.W.9, Lebohang Putsoane, told the court that in July, 1987 she was already a teller in the savings account department of the Bank. On 31st July, 1987 she was on duty at counter No.6 when she served No. 1 accused who was withdrawing a huge amount of M10,000 from his savings account No. 2000805216. No.1 accused handed over his savings account book (Exh 2) together with duly completed withdrawal slip (Exh D). When she checked in both the savings account book and the computer machine, P.W.9 found that an amount of M20,000 had been credited into No. 1 accused's savings account No. 2000805216 on the previous day, 30th July, 1987 and there was a balance of M20,098. The account had, therefore, sufficient funds and she accordingly paid No. 1 accused the amount of M10,000 which he put into his brief case (Exh 3) and left. The money was paid in R50 notes.

Shortly thereafter, P.W.9 heard P.W.4 enquiring about a customer who had withdrawn an amount of M10,000. She reported that she had just served No.1 accused who had withdrawn M10,000. The withdrawal slip with which she had served No.1 accused was taken to the Bank Manager whilst she herself was subsequently told to go and make a statement at the Maseru C.I.D.

P.W.7, Ida Phafane, testified that in July, 1987 she was already a check clerk in the Foreign Exchange Department of the Bank, under the immediate supervision of both the Accountant (P.W.4) and the Sub-Accountant (Mr. Makara). As such her duties included, inter alia,

13/ checking the

checking the clerks in her department to ensure that everything was done correctly.

According to P.W.7 the clerks in the Foreign Exchange Department were at the material time, Miss Phakisi, Miss Makhalanyane and No.2 accused. They were each issued with a set of three(3) passbooks to carry out their work. She conceded, however, that there was, at the time a fourth clerk viz. Malipondo Kokoana who had recently been employed by the Bank. She was not even sure that, as a new arrival, Malipondo was at the time already authorised to use a passbook.

In her evidence P.W.7 confirmed that on 31st July, 1987 there was an information received from P.W.10 that a voucher for a transaction involving an amount of M20,000 from the Foreign Exchange Department was missing. Following the information P.W.7 collected the passbooks that were currently used by all the clerks in her department and checked through them to find if there were any voucher in support of the transaction involving the M20,000.00. There was no trace of any such voucher.

According to P.W.7 all the current passbooks were normally kept by the clerks in their shelves or cubicles from where she collected them. From the shelves of Miss Phakisi and Miss Makhalanyane she found and collected all their sets of three(3) passbooks. From No. 2 accused's shelf or cubicle she, however, found and collected only two passbooks. She herself looked for No. 2 accused's third passbook in the department but all in vain.

However, on the following day, 1st August, 1987, another passbook (Exh B) was brought to her by Mr. Makara, the Sub-Accountant who, for reasons already explained in this judgment, could not be called as a witness in this trial. P.W.7 also assured the court that as she worked with No.2 accused in the same department and was the one supervising his work she knew his handwriting very well. When she inspected Exh. B she had no difficulty, therefore, in identifying the handwriting therein as that of No. 2 accused.

According to her, P.W.7 noticed that at page 1336B of Exh B. a voucher was prepared and then cancelled by No. 2 accused. The message in that transaction purported to have been telegraphic and related to a transfer of the equivalence of M20,000, in sterling, from Manufacturers Hanova Trust Company Account Number 9089050001. As the transaction had been cancelled in voucher 13368, P.W.7 expected it to be repeated in the next following voucher 13369 or any other subsequent voucher in Exh B. It was not.

However, P.W.7 noticed an anomaly in voucher 13369. According to the white carbon copy on Exh B No. 2 accused had drawn out a voucher debiting a savings account No. 9090052027 with an amount of M62.57. She told the court that, granted the transaction made in voucher 13369 was for a debit only, the yellow credit copy ought to have remained unused in Exh B. It was, however, missing together with the yellow copy and only the white carbon copy remained.

When a search for the two copies (i.e. the pink and the yellow copies) that had apparently been removed from voucher 13369 of Exh B was made, only the pink copy

by which savings account No. 9090052027 was being debited in the amount of M62-57 could be found in the storeroom. That was confirmed by P.W.6, Motebang Masika, who told the court that he was the person in-charge of the storeroom at the Lesotho Bank. He handed the pink copy of voucher 13369 as Exh G and assured the court that there was no trace of the yellow (credit) copy thereof in the storeroom.

P.W.7 checked the computer report (Exh C) from the computer centre and found that there was transaction No. 143, by which the amount of M20,000 was, indeed, transferred from account Number 9089050001 into the savings account Number 2000805216. As it was obvious from voucher 13368 of Exh B that it was No. 2 accused who had handled a transaction in which he was telegraphically authorised to debit manufacturers Hanova Trust Company account Number 9089050001 in the equivalence of M20,000, in Sterling, P.W.7 proceeded to check in the telex room of the Foreign Exchange Department for a telex that supported such transaction. She checked through the manufacturers Hanova Trust Company file kept in the Foreign Exchange Department. There was no such telex. In case there was a misfiling, she also checked through all the other files in the department but all to no avail. When later on the Bank statement (Exh A) from Manufacturers Hanova Trust Company arrived she too went through it and found that nowhere did it reflect that it was debited in the amount M20,000 or its equivalence in Sterling.

In his evidence P.W.1, Maitse Moloi, told the court that he was the Bank Manager at the Lesotho Bank in Maseru and his bank had dealings with manufacturers

Hanova Trust Company in England. His evidence corroborated, in as far as it is relevant, that of P.W.4, 5, 7 and 10. P.W.1 told the court that when neither the telex message nor the voucher supporting the transaction by which the amount of M20,000 was credited into No. 1 accused's savings account Number 2000805216 from manufacturers Hanova Trust Company Account Number 9089050001 could be traced, he suspected theft and consequently reported the matter to the police.

P.W.3, D/Sgt. Rantsatsi confirmed that on 31st July, 1987 he received, from P.W.1, a report as a result of which he instructed P.W.2, D/Tpr Sekamo to commence investigations.

The evidence of P.W.2 was to the effect that at about 2 p.m. on 1st August, 1987 he proceeded to the home of No. 1 accused at Upper Thamae here in Maseru. He found No. 1 accused not in and left a message that on his arrival No. 1 accused should report himself at the C.I.D.

Later on the same day, 1st August, 1987 No. 1 accused duly reported to P.W.2 at the C.I.D. where he was interrogated by W/O Tomana, P/W Ntane, P.W.3 and P.W.2 himself. Following his interrogation No. 1 accused took the police officers to his house at Upper Thamae where he produced an amount of M3,800-00 together with his savings account book and passport. He gave the articles to P.W.2 who in turn handed them over to P.W.3 for custody. The police officers returned to their office together with No. 1 accused. The next day and following the information of No. 1 accused, P.W.2 proceeded to Lesotho Bank where he found No. 2 accused. He took him

17/ to the C.I.D.

to the C.I.D. where he confronted him with No. 1 accused. Following the explanation of No.2 accused P.W.2 proceeded to No.1 accused's brother, Moshe Tsosane, at the village of Upper Thamae. On the way to the village, P.W.2 met Moshe Tsosane and took him to the C.I.D. where he confronted him with the two accused. In the presence of the accused, Moshe gave an explanation and took P.W.2 and P.W.3 to his home where he produced and handed over to the police officers an amount of M2,400 which had been hidden in a safer. The police officers took possession of the money and returned to their office together with Moshe Tsosane. Although Moshe was cautioned and charged jointly with the two accused the charge against him was later dropped on the directives of the office of the Director of Public Prosecutions.

As it has already been pointed out earlier, at the end of the case for the prosecution, No.2 accused elected to remain silent and close his case without testifying in his defence. There is, however, an unchallenged evidence, adduced by the crown, to the effect that on 30th July, 1987 No.1 accused's savings account No. 2000805216 was credited in the amount of M20,000 from Manufacturers Hanova Trust Company Account No. 9089050001. The voucher supporting that transaction had emanated from the Foreign Exchange Department in which No.2 accused was one of the clerks. He was, indeed, the clerk who, on 30th July, 1987, brought a bundle of vouchers from the Foreign Exchange Department to P.W.5 in the Data Control Department for punching or computerising. After he had brought the vouchers to the Data Control Department No.2 accused kept on pestering P.W.5 that she should quickly computerise them.

From her computer print out or "Tally" (Exh F) P.W.S was positive that she had, on 30th July, 1987, punched a transaction by which the Foreign Exchange Department was debiting Manufacturers Hanova Trust Company account Number 908950001 with the amount of M20,000 which was to be credited into No. 1 accused's savings account No. 2000805216. The voucher supporting that transaction had, however, disappeared after the transaction had been computerised and could not be traced anywhere in the bank.

As there is no doubt that the transaction by which the M20,000 was transferred from Manufacturers Hanova Trust Company Account No. 9089050001 into No.1 accused's savings account No. 2000805216 had emanated from the Foreign Exchange Department of the bank the question for the determination of the court is whether or not No.2 accused is the clerk who drew out the voucher which supported the transaction.

In this regard there is, an unchallenged evidence that when all the passbooks currently used in the Foreign Exchange Department of the bank were checked, it was found that in his passbook (Exh 8) No.2 accused had drawn out voucher 13368 by which he purported there was a telex message dated 29th July, 1987 authorising transfer of the equivalence of M20,000, in Sterling, from Manufacturers Hanova Trust Company Account No. 9089050001. No.2 accused cancelled the transaction on voucher 13368. But as it appeared there was a telex message dated 29th July, 1987 authorising the transaction, that transaction ought to have been repeated on voucher 13369 which had misteriously a credit page missing.

19/ The transaction

The transaction was, however, neither repeated on voucher 13369 of Exh B nor any subsequent voucher thereof. The purported telex message of 29th July, 1987 authorising the transaction could not be traced in the bank nor could the statement from Manufacturers Hanova Trust Company reflect the equivalence of M20,000, Sterling, which was to be transferred through the Foreign Exchange Department of the Lesotho Bank.

Although No.2 accused had cancelled the transaction on voucher 13368 it is to be observed that the amount of M20,000 or its equivalence, in Sterling, was nonetheless purportedly transferred from Manufacturers Hanova Trust Company Account Number 9089050001 into No.1 accused's savings Account No. 2000805216. As voucher 13369 of the Exh B was the only voucher with a missing page, it seems reasonable to infer that the missing page in voucher 13368 was surreptitiously used to draw out the voucher which supported the transaction involving the M20,000. On the evidence No.2 accused was the only clerk in the Foreign Exchange Department who used Exh B. Indeed, he is the only clerk from that department who, on 30th July, 1987, took vouchers to P.W.S in the Data Control Department. That being so, I am of the view that the answer to the question, I have earlier posted, viz. whether or not No.2 accused is the clerk who drew out the voucher in support of the transaction by which the M20,000 was transferred from Manufacturers Hanova Trust Company into No.1 accused's savings account must be in the affirmative.

Coming now to No.1 accused, he testified in his defence and conceded that on 30th July, 1987 he was already operating savings account No.2000805216 with the Lesotho Bank here in Maseru. The account was on that day credited in the amount of M20,000.

In an attempt to explain how his savings account came to be credited with the M20,000, No.1 accused told the court that prior to 30th July, 1987 he was employed by Avis Rent-A-Car, a company dealing with the hiring of vehicles to people, especially tourists, in this country. Whilst working at Avis Rent-A-Car he met three tourists from overseas, who were interested in given him money which he needed to build flats for renting. Although he wrote their particulars in his diary No.1 accused no longer remembered the names and addresses of the three tourists as that was an old affair. He only remembered one of the tourists as just "David" who later returned to Lesotho and lived in the village of Mohalalitoe here in Maseru. He, however, did not know whether or not "David" was still living in the village of Mohalalitoe.

On 31st July, 1987 No.1 accused went to the bank to withdraw M20 from his savings account No. 2000805216 which admittedly had a balance of only M98. When he presented his savings account book, passport and the completed withdrawal slip to the teller, the latter asked him whether he was expecting money from anywhere. In reply No.1 accused explained that he was not sure if any of the people (Tourists) he was expecting money from had sent it. The teller then handed back all his documents

21/ saying

saying his savings account book did not balance and required up dating. For that reason the teller referred him to another desk, presumably the inquiry desk. He complied.

When he left the inquiry desk, No. 1 accused inspected and found that his savings account book had been credited in the amount of M20,000 giving him a balance of M20,098. He immediately destroyed the withdrawal slip he had previously completed for the amount of M20 and prepared another one (Exh D) by which he demanded payment of M10,000. After it had been paid to him he put the M10,000 in a brief case and left the bank.

As his wife who usually kept his money was not at home, No.1 accused took M5,000 to his younger brother, Moshe, for safekeeping. Out of the M5,000 that remained with him he kept M3,800 in his wardrobe and took the balance to a casino where he and his friends carelessly squandered it on gambling machines and drinks on the night of the same day.

It is significant that No.1 accused does not know the names of the tourists who allegedly promised him financial assistance. Nor, indeed, does he know the Overseas countries of their origin. It is, however, worth mentioning, in this regard, that until the commencement of this trial, on 7th June, 1989, No.1 accused was on bail. If it were true that he had noted the particulars of the tourists in his old diary, No.1 accused had, therefore, ample time to look for the diary which could have been produced in support of his story. No such diary has,

22/ however,

however, been produced and No. 1 accused merely contended himself with saying he did not know if his wife had destroyed the diary as this was an old affair.

There is no doubt in my mind that No.1 accused's story that he was promised money by some unknown tourists has no truth and it would have been a waste of time for the crown to follow it. I accordingly reject it as false.

Although he told the court that when he came to the bank on 31st July, 1987 he wanted to withdraw the amount of M20 but a teller refused to serve him and instead referred him to the inquiry desk to have his savings account book up dated, No.1 accused himself testified that he did not know the teller nor, indeed, could he identify her if an identification parade were to be held.

It may, perhaps, be mentioned at this stage that P.W.9, a teller at the savings account department of the bank, testified that where it was found that a customer's savings account book required up dating, the procedure followed at the bank was that the teller would first serve such customer and then refer him to the inquiry desk for the up dating of his book. Her evidence was, in that regard, corroborated by P.W.8, a clerk at the inquiry desk. The evidence of both P.W.8 and P.W.9 did not, therefore, support No.1 accused's story that when, on 31st July, 1987 he came to the bank to withdraw the amount of M20 a teller he could not even know refused to pay him the M20 and instead referred him to the inquiry desk to have his savings account book up dated.

Assuming, for the sake of argument, the correctness of his story that when, on 31st July, 1987, he came to the bank No.1 accused wanted to withdraw only M20 from his savings account which admittedly had, even before it was credited in the amount of M20,000, a balance of M98, I find it incredible that instead of paying him the small amount of M20 the unnamed teller would have referred him to the inquiry desk thus causing him the trouble of having to cue in the line for the second time.

In my view, what is sensible is the crown evidence that in the morning of 31st July, 1987 No.1 accused came to the bank, went straight to the inquiry desk and verified that his savings account Number 2000805216 had been credited in the amount of M20,000 which P.W.8 duly entered in his savings account book. Only then did No.1 accused prepare the withdrawal slip for M10,000 and went to P.W.9, the teller who, on the basis of the entry made by P.W.8 in his savings account book, paid him the money. No.1 accused never prepared a withdrawal slip (for M20) which, as he wants this court to believe, he later destroyed. The haste in which, the moment he realised that the huge amount of M20,000 had been deposited into his savings account, No.1 accused withdrew M10,000 and squandered part thereof, leaves no doubt in my mind that he knew that the money had not been lawfully acquired or deposited into his savings account.

Although in his testimony No.1 accused denied that, apart from casually seeing him at the bank, he knew No.2

accused, there was ample circumstantial evidence indicating that he did know him and in his denial he was, therefore, not being honest with this court. No.2 accused had for example, on 30th July, 1987 caused M20,000 to be deposited into No.1 accused's savings account No. 2000805216. In the morning of the next day, 31st July, 1987, No.1 accused was already at the bank where he verified that the money had, in fact, been paid into his savings account. He immediately withdrew M10,000 of which he carelessly spent part on gambling machines and drinks at a Casino during the night of the same day. Indeed, P.W.2, whose evidence I can think of no good reason to doubt, told the court that it was on the information given by No.2 accused that he and other police officers started looking for Moshe Ts'osane who was admittedly keeping another portion of the M10,000 that No. 1 accused had withdrawn from the bank on 31st July, 1987.

From the foregoing, I am of the view that prior to 30th July, 1987 the two accused did not only know each other very well but had designed a scheme whereby No.2 accused was to fraudulently cause to be deposited into accused 1's savings account No. 2000805216 money which the latter would withdraw. I simply do not see how No.2 accused could have known and deposited money into, No.1 accused's savings account No. 2000805216 unless the latter had furnished him with the account number for the purpose of carrying out their scheme

In pursuit of their fraudulent scheme No.2 accused purported there was a telex message dated 29th July, 1987 authorising manufacturers Hanova Trust Company account

No. 9089050001 to be debited in the amount of M20,000, in Sterling. To that effect he prepared a voucher on the strength of which P.W.5 computerised transaction 143 which was purportedly crediting No.1 accused's savings account No. 2000805216 in the amount of M20,000 from manufacturers Hanova Trust company account No. 9089050001. On the basis of the computerised transaction 143 No. 1 accused's savings account No. 2000805216 was, indeed, credited in the amount of M20,000 from which he withdrew M10,000-00.

As it has been pointed out earlier, there was never a telex message authorising the drawing out of the voucher in support of transaction 143 which was computerised by P.W.5. Assuming the correctness of my finding that the telex message never existed it must be accepted that the voucher drawn out by No.2 accused in support of transaction 143 was a misrepresentation or a wilful perversion of the truth obviously made with intent to defraud the bank. Indeed, acting on the misrepresentation of the accused, the officials at the Lesotho Bank did credit No.1 accused's savings account No. 2000805216 in the amount of M20,000 to the prejudice of the bank. Again, assuming the correctness of my finding that the two accused acted together or aided each other in the execution of this unlawful act, it must be accepted that they are, on the well known principle of common purpose, equally liable.

In the result, I am satisfied that, taking the evidence as a whole, the offence against which they stand charged in the main charge has been proved beyond reasonable doubt

I would, in the circumstances, find both accused guilty as charged in the main charge.

Both my assessers agree.

SENTENCE : Accused 1 - 6 years imprisonment
Accused 2 - 7 years imprisonment

It is ordered that the M10,000 which is the balance remaining in A1's Savings Account book, the amount that A1 produced from a wardrobe in his house and the amount that was hidden in, and taken from Moshe's sofa must all be returned to Lesotho Bank. A1's Savings Account book together with its lawful balance of M98-00 must be returned to him after the necessary adjustments have been made therein by the Bank.

B.K. MOLAI

JUDGE

15th May, 1990.

For Crown : Mr. Thetsane
For Defence : Mda.