

IN THE HIGH COURT OF LESOTHO

In the Appeal of :

MOKETE SEPHOKO

v

R E X

J U D G M E N T

Delivered by the Hon. Mr. Justice M.L. Lehohla
on the 25th day of April, 1991

From the state of the record it appears that the Magistrate who convicted you did so properly. But apart from that there are a number of things which are not satisfactory in this case. I will start first of all by showing that it appears that this case should properly have been dealt with by a Judge who reviewed it in the first place.

It appears that through correspondence the learned Judge had some difficulty as to why the Magistrate came to the conclusion that he did as to the penalty imposed. The learned Judge asked the learned Magistrate to give reasons which the learned Magistrate duly supplied. The reasons that the Magistrate gave are satisfactory on the whole. The Magistrate outlined that he dealt with the case on the basis of Road Transport Act of 1981 as Amended by Order No.14 of 1987 whereas the learned Judge had thought that this case fell to be treated under Road Traffic Act and the learned Magistrate, it appears, had difficulty trying to reconcile this law with the benignity he felt was warranted with regard to sentence and common sense. What really worried the learned Magistrate

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was the fact that he felt it was mandatory upon him to make an order of forfeiture of the vehicle which is the incidental part of these proceedings. The relevant section relied on, that is, Section 27(1)(a) of Order No.14 of 1987 says :

"A person guilty of an offence under this Act for which no special penalties are provided is liable -

- (a) in the case of a first offender to a fine of not less than M500.00 and to imprisonment for not less than three(3) months
- (b) in case of a second or subsequent offence to imprisonment for not less than six(6) months without the option of a fine".

Subsection (2) says

"In addition to the penalties specified in subsection (1) the court convicting a person of an offence involving an unauthorised operation of a public motor vehicle shall declare the motor vehicle of the convicted person or person's right in such vehicle to be forfeited to the State".

To all appearances it seems that the learned Magistrate could be credited with having applied his mind properly to these subsections. But I do feel that in comparison with a similar statute which deals with minimum penalties i.e. Revision of Penalties(Amendment) Order 10 of 1988 it is specifically mentioned that no portion of the penalties provided in such Statute shall be suspended. But by contrast with this one there is no such specific order that a person found guilty under this subsection shall not have a portion of his sentence suspended. By comparison it would mean therefore - my interpretation I hope is correct - that by contrast with the former type of Statute referred to earlier , this particular Statute that we are dealing with here does not prevent a portion of the sentence or the entire sentence being suspended. So I think that a portion of this M500.00 fine and or 3 months' imprisonment referred to above should be suspended more so because the accused

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did not waste the time of the Court. He pleaded guilty. As I stated the Judge before whom this matter came made his own order regarding the fact that the Magistrate should supply reasons for the conclusion that he reached.

Had the proper procedure been in fact followed when this appeal was being pursued - in other words if provisions of Section 327 of our Criminal Procedure and Evidence Act 1981 had been followed - then it would have been clear to me before I dealt with this matter that it stood to be determined by the Judge who had in the first place dealt with it. The provisions of Section 327 are as follows :

"If an appeal against a conviction or sentence from a Subordinate Court has been duly noted, the court of appeal, on perusing the record of the case, including the appellant's statement setting out the grounds upon which the appeal is based, and any due notice of amendment thereof, and any further document that may have duly become part of the record, may if it considered that there is no sufficient grounds for interfering, dismiss the appeal summarily".

Section 328 following immediately after the first provides that -

"If the Court of Appeal does not dismiss the appeal summarily thereunder Section 327 it shall ~~give~~^{cause} notice to be given to the appellant or his counsel or the Director of Public Prosecution or in the case of a private prosecution to the complainant or his counsel of the time and place at which the appeal will be heard, furnishing the Director of Public Prosecutions or the complainant or his counsel with a copy of the record of the case including the appellant's statement setting out the grounds upon which the appeal is based and any due notice of amendment thereof any further documents that may have duly become part of the record".

All I am saying is that had this Court been appraised of this record in good time then ^{it} would not have had any difficulty in letting the Judge who had made earlier orders deal with the matter.

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It does not benefit anyone to ignore the statute that regulates the procedure intended to be followed by this Court.

The procedure set out in these sections is simple. All it enjoins the Registrar to do when a record of proceedings on appeal from the Subordinate Court arrives is to place it before any Judge who should determine whether to dismiss the appeal summarily or decide that the Registrar should place it on the roll for hearing in the ordinary manner. Usually if this procedure is adopted the hearing of the appeal should occur within a week if the appellant is in custody and within three weeks if he is on bail and his place of abode lies in a remote area where it takes police a longer time to serve him with a notice of hearing. See CRI/A/55/83 William Mabote vs Rex (unreported) by Mofokeng J. See also CRI/A/22/85 Phohlo vs Rex (unreported) at page 5.

I need hardly state that the Court of Appeal of Lesotho found it necessary to blaze the trail in an attempt to demonstrate the necessity of observing the importance of provisions of sections referred to above in the famous appeal i.e. C. of A (CRI) No. 2 of 1984 Teboho Seholoholo vs Rex (unreported)

Another feature which I think should redound to the accused's benefit is the interpretation of subsection (2) of Section 327. It shows that an offending vehicle should be confiscated or forfeited to the Crown. It also recognises that the offending vehicle may not be belonging to the person driving it. While in the first instance the person who would feel the penalty would be the owner though forfeiture of his vehicle I find it difficult to see how the right of the driver to whom the vehicle does not belong could be forfeited to the State. To that extent I feel that the order of forfeiture of this vehicle was not proper - I therefore set it aside as I had stated earlier.

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The accused was properly convicted but I feel that the sentence imposed was rather on the harsh side. I find it fitting therefore that M400.00 or two (2) months of the sentence be suspended for a period of one year on condition that the accused is not convicted under the provisions of the law under which he was charged. It stands to reason therefore that the order as to sentence that was imposed by the learned Magistrate is set aside and is substituted by the one I have just pronounced.

J U D G E

25th April, 1991

For Appellant : Mr. Mohau

For Crown : Ms. Nku