

IN THE HIGH COURT OF LESOTHO

In the Appeal of

MORUTI MOSEME

Appellant

v

R E X

Respondent

J U D G M E N T

Delivered by the Hon. Mr. Justice M.L. Lehohla on the
2nd day of February, 1994

The Court is operating under a rather unfortunate disadvantage of not having got the record on time and as a result even the favour that appellant's Counsel did by giving it the heads of arguments was not of much help in the circumstances. But however there are two or three things upon which it appears that in fact appellant who was accused No 2 in the Court below was wrongly convicted

He was charged together with two others, of having stolen items of property which are elaborated in the Charge Sheet, and they read as follows

one base unit

one door
one roll of wire
one mattress
two window frames

Yet strangely enough, in the evidence given, mention is made of four doors, two rolls of wire, mattress, four steel poles and step ladder.

It was argued on behalf of the appellant that it seems that the evidence shows things which are far in excess of things which are supposed to form part or substance of the Charge Sheet

Indeed while one cannot readily accept that as pointing towards anything, in the circumstances of this case that submission is supported by a number of factors, namely, over-zealousness of the police - which has been conceded of course by the crown - might, have accounted for this excess of these items, further the possible enthusiasm of the complainant to embellish his version cannot lightly be discarded in the circumstances of this matter.

I am saying this because in a proper case it cannot be excluded that where certain items of property forming the substance of a Charge Sheet are exceeded in evidence by similar or even more other items of property - that doesn't necessarily mean that what appears in the Charge Sheet, if proved should be rejected but in this particular case a number of factors show

that the appellant couldn't properly have been convicted.

Mention has been made that the appellant was cross-examined by one of the co-accused who indicated through cross-examination how property came to be in the possession of the appellant and thereby suggesting that a taint of dishonour attached to this but that accused didn't give any evidence to gainsay the denial by the appellant in that regard - so what remains standing in so far as this is concerned is the evidence of the appellant against nobody else's

It is the requirement in law that although an accused person bears no onus to prove anything relating to the charge against him - but it is important that he gives an explanation and the appellant did in fact give such an explanation. And in the nature of things it doesn't seem to me to be the sort of explanation that falls short of the requirement which once satisfied entitles him to his acquittal. If what he says is reasonably possibly true, and it need not be true as long as it is reasonably possibly true, then he is entitled to his acquittal.

There is also another matter relating to the question of law. The statute, the Criminal Procedure and Evidence requires that within fourteen days of an accused person lodging his appeal the Magistrate who presided on the trial should furnish his

reasons. But "Lo behold!" in this one more than two month elapsed before the Magistrate complied with this requirement or failed to comply with this requirement and it was argued that this amounts to functus officio on the part of the magistrate, and I agree.

It is for this and other reasons which the Court tried to glean from the record and the Heads of Argument together with arguments which have been placed before the Court that it was found fitting to have the appellant acquitted.

The Order is that he is acquitted.

One other thing, because of the nature of this case, the Court feels hesitant to give an Order releasing the exhibits to either of the parties in this matter as far as relates to a man who was accused No.2 and now is the appellant before this Court

The Order that the Court can safely make in the circumstances would be that in terms of the Criminal Procedure and Evidence the property should remain in the premises of the Subordinate Court Leribe for a maximum period of 60 days and if during that period nobody claims it then the Magistrate is empowered to dispose of it as the Law requires.

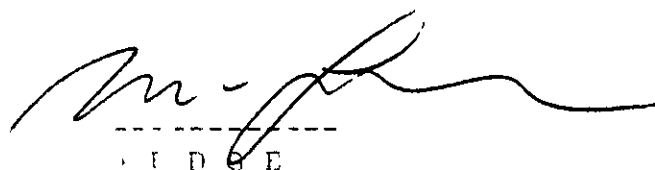
I am giving this Order to enable the parties who are

interested in the property to go to court and claim and support their claims in respect to it

There is also another matter which I forgot while giving the main reasons, namely, that -

The story by the crown doesn't seem to hold water in so far as it casts criminal liability on the appellant because it was in evidence shown that one of the accused who was a night watchman in a nearby Agric compound said in evidence that he didn't know the appellant yet strangely when the appellant stated in his version that that was the man who had asked him to keep an eye on the property that he kept in his (appellant's) care this same accused is the man who brought the police there - How could he say that he doesn't know the appellant when his acts deny his story so much.

The appellant accounted fairly reasonably for the property found in his possession.



J U D G E

2nd February, 1994

For Appellant Mr. Teclé
For Respondent Mr. Semoko