

IN THE HIGH COURT OF LESOTHO

In the Appeal of :

'MALEHASA MAPIKITLA

Appellant

vs

R E X

Respondent

J U D G M E N T

Delivered by the Hon. Mr. Justice M.L. Lehohla on
the 16th day of December, 1994

In the present appeal, the appellant 'Malehasa Mapikitla a forty-five year old teacher was convicted on her own plea in the court below of having stolen M770-00 which was the property and in the lawful possession of 'Mamahase Mokhobatau, as outlined in the Charge sheet.

The record is very very brief and I need just go over it as follows : She appeared in court on the 7th November 1994 and she assured the court below that she understood the charge for her response to it is that she is guilty. Her plea was accepted by the prosecutor who, as he was wont to do, outlined the facts of the case as follows, namely, evidence would show that accused is a teacher at Motati Primary School. Complainant is the vice-

Principal. A trip was organised at the school whereby the school would go on a visit to Morija and Thaba-Bosiu.

The accused was assigned to collect the money for transport and each student was paying M15-00. Accused was supposed to collect the total amount of M770-00. The trip was to take place on the 3rd of November, 1994. On that day everybody i.e. the students, teachers and bus owner were waiting for the accused to arrive but she did not until they left. On the way back home the teachers went via accused's place to collect the money but accused said she had given it to the owner of the bus already. The teachers went to meet the owner of the bus who said he did not receive such money from the accused. The teachers then went to report the incident to the police who went to meet the accused. They asked the accused for an explanation and the accused was charged as aforesaid.

The accused in her turn accepted as correct the outline of facts by the public prosecutor. She was accordingly convicted on her own plea it being indicated also that she had no previous convictions.

She made a plea in mitigation which was to the effect that she would wish to be given an opportunity to pay back the money and she indicated that she was the sole breadwinner, that she had six children and that her husband had died in 1990; that she has been

a teacher for seventeen years; and that she earns a salary of M500-00 per month as an employee of the government.

In imposing sentence of six months' imprisonment without an option of a fine the learned Magistrate indicated that he had taken into consideration the mitigating factors and personal circumstances of the appellant. She appealed represented by MR TEELE on the ground -

1. that there is no proof beyond reasonable doubt that she took the money without the consent of the owner;
2. the second ground of appeal is that the outline of facts demonstrates that the alleged complainant 'Mamahase Mokhobatau, the vice-Principal was not the owner and her legal interest does not appear *ex-facie* the record, and therefore there was an error in convicting the appellant without establishing the link or the interest of the complainant which is a necessary element in the commission of theft.
3. that the learned Magistrate failed to attach due weight to the personal circumstances of the appellant in passing sentence and therefore this sentence is bad in law.

The Court is grateful for the arguments advanced by both counsel and particularly for the heads of argument which were filed on behalf of the Crown by MR RAMAFOLE who indicated - I must say as to conviction - very correctly that the appellant was the agent of the vice-Principal of the school and in that capacity was entitled to receive the money which had been collected for purposes of the trip from the appellant and in that regard the vice-

Principal was entitled to feature in this proceedings as complainant who bore the relationship of principal vis a vis the appellant who was the principal's agent.

A question of some nicety was brought into play during these proceedings namely how much money is alleged to have been actually stolen, because according to the outline of the case we were told that each student for the purpose of this trip was to pay M15-00 and that the accused was supposed to collect the total amount of M770-00. It is not clear whether she collected the amount stated, and without speculating, it cannot be said all the amount collected would amount only to M15-00 otherwise I don't think practical wisdom or common sense would be shown to be complied with if a trip is taken where each student is supposed to pay M15-00 and all the amount paid is only M15-00. It wouldn't have been worth accepting the undertaking to go on the trip from the bus owner's viewpoint.

But what is clear is that some money was collected.

With regard to the question whether in fact the crime of theft has been committed one would have to look at the record and from it, it appears that the appellant referred to the money that she alleged she had given to the owner of the bus and the money that one could infer was referred to here is the money which was collected for purposes of the trip, although as I have indicated above it is not clear whether it was the M770-00 which was supposed

to have been collected or a lesser amount, I would assume for purposes of this matter and in the appellant's interest that it could have been a lesser amount notwithstanding the real possibility that it could have been the same M770-00 if one has regard to the inelegance unusually attendant on drafting or summarising evidence on the part of public prosecutors generally with the result that the phrase that "the appellant was supposed to collect the total amount of M770-00" could very well have been used to mean in fact that the amount was collected. Thus the inelegance in the leading of evidence cannot be visited on the appellant.

But however, I would imagine an amount not far below the M770-00 was collected otherwise the trip wouldn't have been worth taking due regard being paid to the fact that a certain number of students paying M15-00 each were actually conveyed.


One cannot for purposes of conviction overlook the fact that a teacher who is the appellant stated that she had collected the money and the money collected was given to the owner, and this happens not to be true. So, from that surely an inference can be drawn that she was lying when she said she had given this money to the owner of the bus. Basing oneself on the case of **Broadhurst vs R** (1964) AC 441 at 457 which says, an accused person who gives false evidence is no different from an accused who says nothing at all; and that in the event that two inferences may be drawn as to

the accused's conduct, the fact that the accused has been untruthful is a factor which can be taken into account as strengthening the inference of guilt. I think the proposition in that case applies in the instant one. I accordingly find that the accused was properly convicted of the crime of theft. But I would leave open the question of the amount forming the subject matter of the theft committed.

As to sentence it has been strongly argued by MR TEELE that account which has been taken of the circumstances of the appellant excluded the balancing of the interests of the appellant against those of society. Because this factor was not taken into account when the learned Magistrate considered the plea in mitigation this Court is entitled to interfere in the matter of sentence, he thus urged that either a suspended sentence or an option of fine should have been imposed. Indeed sentencing is pre-eminently a matter for a trial court. This Court can only interfere either if it finds as properly put in the Heads of Argument - that the sentence was shockingly low or shockingly high. I must say the learned Magistrate did not only state that he took into account the personal circumstances of the appellant but he in fact appears to have done so. The only element which I think was properly placed before this Court (which in any case was originally of the view that the appellant seems to have got away with a rather light sentence) is that advanced by MR. TEELE that the interests of society were not taken into account as against those of the

appellant or vice versa, and therefore it is fitting for this Court to give its attention to that. It is in this regard that the Court finds very reluctantly that it can and should interfere - thanks to the argument advanced by MR TEELE.

I have stated that the Court was of the original view that the sentence imposed was too light but on the basis of authorities cited the Court is persuaded that because this particular factor was not raised and does not seem to have been involved in any case, in the court below, it ought to have been given some significance in the interests of the appellant. In the result while confirming the conviction the Court feels that the sentence should be altered or set aside and replaced by the following: the accused is sentenced to M400-00 fine or six months' imprisonment.



J U D G E

16th December, 1994

For Appellant : Mr. Teele

For Respondent: Mr. Ramafole