

CRI/T/43/93

IN THE HIGH COURT OF LESOTHO

In the matter of:

R E X

v.

'MAMAKOAE MOKOKOANE

J U D G M E N T

Delivered by the Hon. Mr. Justice B.K. Molai  
on the 13th day of February, 1994.

The accused is summarily charged with six (6) counts of Theft by false Pretences on the following allegations:

COUNT 1

In that upon or about 5th day of July, 1991, and at or near Treasury Department in Maseru, in the district of Maseru, the said accused did unlawfully and with intent to defraud and to steal, misrepresent to the Treasury Department that a certain payment voucher number 017107 dated 3rd July, 1991 was a good and honest voucher for payment of

stipends to certain internship students whose names were listed in an appendix attached to the said payment voucher, and did, by means of the said misrepresentation obtain from the Treasury M15,200-00 the property or in the lawful possession of the Lesotho Government, which money the accused did steal, thus committing the crime of THEFT BY FALSE PRETENCES.

#### COUNT II

In that upon or about the 9th day of August, 1991 and at or near Treasury Department, in Maseru, in the district of Maseru, the said accused did unlawfully and with intent to defraud and steal, misrepresent to the Treasury Department that a certain payment voucher number 023354 dated 7th August, 1991 was a good and honest voucher for payment of stipends to certain internship students whose names were listed in an appendix attached to the said voucher, and did, by means of the said misrepresentation, obtain from the Treasury, M15,200-00 to property or in the lawful possession of the Lesotho Government, which money the said accused did steal, thus committing the crime of THEFT BY FALSE PRETENCES.

#### COUNT III

In that upon or about the 11th day of September, 1991 and at or near Treasury Department, in Maseru, in the district of Maseru, the said accused did unlawfully and with intent to defraud and steal, misrepresent to the Treasury Department that a certain payment voucher number 028772 dated 4th September, 1991 was a good and honest voucher for payment of stipends to certain internship students whose names were listed in an appendix attached to the said voucher, and did, by means of the said misrepresentation obtain from the Treasury M15,200-00 to the property or in the lawful possession of the Lesotho Government which money the accused did steal, thus committing the crime of THEFT BY FALSE PRETENCES.

#### COUNT IV

In that upon or about the 8th day of October, 1991 and at or near Treasury

Department, in Maseru, in the district of Maseru, the said accused did unlawfully and with intent to defraud and to steal, misrepresent to the Treasury Department that a certain payment voucher number 033126 dated 8th October, 1991 was a good, and honest voucher for payment of stipends to certain internship students whose names were listed in an appendix attached to the said voucher, and did, by means of the said misrepresentation, obtain from the Treasury M15,200-00 the property or in the lawful possession of the Lesotho Government, which money the said accused did steal, thus committing the crime of THEFT BY FALSE PRETENCES.

#### COUNT V

In that upon or about the 4th day of November, 1991 and at or near Treasury Department, in Maseru, in the district of Maseru, the said accused did unlawfully and with intent to defraud and to steal, misrepresent to the Treasury Department that a certain payment voucher number 036835, dated 4th November, 1991 was a good and honest voucher for payment of stipends to certain internship students whose names were listed in an appendix attached to the said voucher, and did by means of the said misrepresentation obtain from the Treasury M15,200-00, the property or in the lawful possession of the Lesotho Government, which money the said accused did steal, thus committing the crime of THEFT BY FALSE PRETENCES.

#### COUNT VI

In that upon or about the 18th day of December, 1991 and or near Treasury Department, in Maseru, in the district of Maseru the said accused did unlawfully and with intent to defraud and to steal, misrepresent to the Department that a certain payment voucher number 046262, dated 18th December, 1991 was a good and honest voucher for payment of stipends to certain internship students whose names were listed in an appendix attached to the said voucher, and did by means of the said misrepresentation obtain from the Treasury M15,200-00, the property or in the lawful possession of the Lesotho Government, which

money the said accused did steal, thus committing the crime of THEFT BY FALSE PRETENCES.

When the charges were put to her the accused pleaded not guilty and a plea of not guilty was accordingly entered on all the six (6) counts. Eighteen (18) witnesses were called to testify in support of the Crown case. No witnesses were called to testify on behalf of the defence although the accused herself gave evidence on oath.

It is common cause from the evidence that the accused is a civil servant in the Government of Lesotho. In 1991 she was the Accountant at the Accounts Section of the National Teacher Training College (N.T.T.C.) which is a department in the Ministry of Education. There exists, at the N.T.T.C., a system whereby from July up to December each year, students in the second year of their studies go out to various schools in the country to do teaching practice commonly known as internship. During the period of their internship the students are paid monthly allowances/stipend by the N.T.T.C. The money with which to pay these allowances/stipend is obtained by the accounts section of the N.T.T.C. from the Treasury department of the Ministry of Finance. It is the money admittedly obtained from the Treasury department purportedly for this purpose that the accused is alleged to have stolen and thus committed the offenses

against which she stands charged.

In as far as it is relevant, P.W.6, Sehlotsoana Nts'ala, testified that he was employed as Controller of Audits at the Audit Department of the Ministry of Finance. In 1991 he mounted a course for Auditors. In order to demonstrate to the participants of the course how a vote book was reconciled with the Treasury records, he picked and used as an example the vote book of N.T.T.C. In the course of that exercise it came to his notice that according to its records the Treasury had made some payments which were, however, not reflected in the N.T.T.C. vote book. That arose some suspicions in the mind of P.W. 6 who decided to follow up the anomaly by going to N.T.T.C. and carrying out what he termed audit investigations.

At the end of his investigations P.W.6 compiled a report which he addressed to the Principal Secretary for the Ministry of Education. He retained a copy of the report for the records of his office. His efforts to retrieve the original report for use before this court were, however, unsuccessful. He, therefore, handed in copy of the report as exhibit I and part of his evidence in this trial.

According to Exh I P.W.6's findings were briefly that in 1991 there were 161 students of N.T.T.C. doing their teaching practice at various schools commonly referred to as "sites". The students were to be paid allowances/stipend at the rate of M80 each per month. The payment was to be effected in the form of cheques issued in the names of individual students.

Before the start of internship period in July, 1991, a list of the names of the students was submitted by the NTTC to the Computer Centre of the Treasury so that it could be computerised. Cheques would then be automatically issued in the names of individual students at the end of every month. The cheques would then be collected from the Treasury Department by the N.T.T.C. for distribution amongst the students at their respective sites.

After the cheques for the month of July, 1991 had been released from the Treasury Department, it was found that the computer had omitted the names of some students who did not, therefore, receive their allowances/stipend. Altogether eight (8) students did not receive their allowances/stipend. Consequently a voucher was prepared, apparently by a certain Mrs Qhobela who was the accounts clerk at the N.T.T.C., to pay the eight (8) students in cash.

For the months of August - December, 1991 there were still no cheques issued in respect of the eight (8) students who were none the less paid their allowances/stipend in case although no payment vouchers had been prepared and sent to the Treasury to procure the funds for that purpose. The remaining 153 students were duly paid their allowances/stipend in the form of cheques issued, by the computer Centre of the Treasury Department, in their individual names during the same period viz. from August to December, 1991. The cheques of four (4) of the students had, however, underpayment totalling about M370.00.

Notwithstanding the fact that the 153 and the 8 internship students were duly paid their allowances/stipend by individual cheques and cash, respectively, for the whole period of internship viz. from July to December, 1991, P.W.6 found that during the same period a voucher was prepared, every month by the N.T.T.C. to procure, from the Treasury an amount of M15,200 purportedly to pay 190 instead of the official 161 internship students' allowances/stipend at the rate of M80.00 per student. As a result of those payment vouchers the Treasury issued six cheques to the tune of M15,200-00 each payable to the Director N.T.T.C. (M.A. Mokokoane). The cheques were all cashed by the accused either at the Standard Bank or the Central Bank of Lesotho. There was, however, no

record of what the accused did with the money.

P.W.7, Khoai Matete, told the court that at the material time viz. from July to December, 1991 he was already the Principal Secretary for Education. He confirmed the evidence of P.W.6 that the latter addressed to him the report, Exh I, which he subsequently passed on to the police for investigation. I shall return to the evidence of P.W.7 later in this judgment.

P.W.1, Captain Sekatle, testified that he was a police officer stationed at the Police Headquarters here in Maseru. He confirmed that he received from the Ministry of Education Headquarters the report, Exh I. That was on 5th March, 1992. Following receipt of the report, he proceeded to Audit Department of the Ministry of Finance. At the Audit Department he met P.W.1 who gave him the following documents:

- (a) Seven (7) payment vouchers of which six (6) reflected an amount of M15,200 each whilst one reflected an amount of M640. Each of the six (6) payment vouchers reflecting M15,200 had a list of 190 names attached thereto. The payment voucher reflecting the amount of M640 had a list of eight (8) names attached thereto.
- (b) A register book and



- (c) Records of students' cheques numbers filed according to the ten(10) sites where students were serving their teaching practice.

The seven (7) payment vouchers, the register book and the records of students' cheques filed according to the sites where students were serving internship or teaching practice had since been in the police custody. He handed them in as:

- EXH A - Payment voucher for the month of July, 1991.
- EXH A1 - payment voucher still for the month of July, 1991.
- EXH A2 - payment voucher for the month of August, 1991.
- EXH A3 - payment voucher for the month of September, 1991.
- EXH A4 - payment voucher for the month of October, 1991.
- EXH A5 - payment voucher for the month of November, 1991.
- EXH A6 - payment voucher for the month of December, 1991
- EXH B - the register book.
- EXH C1 - record of students' cheque numbers filed according to Maputsoe site.
- EXH C2 - record of students' cheque numbers filed according to Mohale's Hoek site.
- EXH C3 - record of students' cheque numbers filed according to Roma site.
- EXH C4 - records of students' cheque numbers filed according to Morija

site.

- EXH C5 - record of students' cheque numbers filed according to Leribe site.
- EXH C6 - record of students' cheque numbers filed according to Mafeteng site.
- EXH C7 - record of students' cheque numbers filed according to Butha-Buthe site.
- EXH C8 - record of students' cheque numbers filed according to Maseru site.
- EXH C9 - record of students' cheque numbers filed according to Quthing site.

From the Audit Department P.W.1 proceeded to the N.T.T.C.. He met the Director who referred him to a certain Mrs. Qhobela. A list of 161 names of students who were doing their teaching practice in 1991 and a Vote Book were handed to him by Mrs. Qhobela. The list of students and the Vote Book had since been in the police custody. He handed them in as:

- EXH D - the list of 161 names of students who were doing their teaching practice in 1991.
- EXH E - the Vote Book.

From the N.T.T.C. P.W.1 went to the bank reconciliation section of the Treasury department

where he obtained six (6) used cheques which had been issued in the name of "Director NTTC (M.A. Mokokoane)" as a result of payment vouchers Exh A, A2 - A6. The reverse side of each of the six (6) cheques bore the signature and the Local Passport number L.079911 of the accused as indication that she was the person who had cashed them. The cheques had since been in the custody of the police. He handed them in as :

EXH F - used cheque of M15,200 dated 3/7/91  
EXH F1 - used cheque of M15,200 dated 7/8/91  
EXH F2 - used cheque of M15,200 dated 9/9/91  
EXH F3 - used cheque of M15,200 dated 11/10/91  
EXH F4 - used cheque of M15,200 dated 5/11/91  
EXH F5 - used cheque of M15,200 dated 18/12/91

From the Treasury department P.W.1 returned to his office at the Police Headquarters. He called Mrs Qhobela of NTTC to his office for interrogations. Thereafter he called the accused whom he already regarded as a suspect. He cautioned the accused, presumably in terms of the judges rules. As a result of accused's explanation P.W.1 went to her house and carried out a search. He seized accused's local passport number L.09911 which had since been in the custody of the police. He handed it in as:

EXH G - Local Passport No. L.079911.

P.W. 1 subsequently cautioned and charged the accused as aforesaid.

P.W.3, "Mabaphuthing Moorosi, told the court that in 1991 she was the Internship Coordinator at NTTC. She had field supervisors to assist her in her work.

Before the start of the teaching practice in July, 1991 P.W.3 made preparations for 160 NTTC students who were to do their teaching practice from July up to December, 1991. To facilitate payment of allowances/stipend to the students she opened a register (Exh B) showing the following headings: the year, the names of sites and students, the months and signature; she caused the names of the students to be listed on a sheet of paper (Exh D) which she sent to the accounts office of the NTTC; she supplied copies of Exh D to the offices of the Director NTTC, the Deputy Director and the field supervisors at the various teaching sites throughout the country.

Towards the end of July, 1991 P.W.3 was notified by the accounts' office of the NTTC that the stipend money was ready for collection. She took her register (Exh B) and proceeded to the accounts Office where a certain Mrs. Qhobela gave her the stipend money in the form of cheques issued in the names of individual students. After she and Mrs. Qhobela had checked them against the names of students in Exh B, P.W.3 took the cheques and returned to her office where she entered

the cheque number of each student opposite his/her name. She kept the cheques in her office until they were collected therefrom by the field supervisors for distribution amongst the students under their supervision in the various teaching sites. When they collected the cheques the field supervisors signed in the register (Exh B) as proof that they had done so.

After all the cheques had been collected from her office it came to P.W.3's notice that seven (7) of the students who had been listed in Exh D did not have cheques for their stipend. She also noticed that the name of one student, Thoo 'Mamonki, had in fact been erroneously omitted in Exh D. She went to the Accounts Office of NTTC and reported the matter. She reported that altogether eight (8) students had not received their stipend for the month of July, 1991. She made a list of the eight (8) students which list she handed to Mrs Qhobela and, in her own handwriting, added the name of Thoo 'Mamonki in Exh D thus increasing the official number of students who were serving their teaching practice in 1991 to 161. She told the court that the names listed in the annexure to Exh A1 were the names she had handed to Mrs Qhobela as being of the students who had not received their stipend cheques for the month of July, 1991.

When, at the end of August 1991, she went to

collect the stipend money from the accounts office of NTTC, P.W.3 was given by Mrs Qhobela, cheques issued in the names of 153 students plus cash amounting to M1280 being payment for the months of July and August 1991 in respect of the eight (8) students who had not been paid their stipend in July 1991. The cheques and cash were checked, against the list of students in Exh B, by Mrs Qhobela and P.W.3 before the latter could take the stipend money to her office from where the field supervisors collected it for distribution amongst the students under their supervision. The same procedure was followed for the months of September to December, 1991 with the exception that the total cash amount for the eight (8) students who were not paid by cheques was M640 a month.

In her evidence P.W.3 told the court that whenever she went to collect the stipend money from the Accounts Office of the NTTC she would find the accused, who was the Accountant, and Mrs Qhobela, who was the accounts clerk in the office. She would then inquire whether the money was available for collection and the accused would reply: "Yes, Mrs Qhobela serve her, please." As she said so the accused would hand an envelop to Mrs. Qhobela who proceeded to a cabinet from where she brought cheques issued in the individual names of the internship students. Mrs Qhobela would then hand over to her (P.W.3) the

envelop containing the amount of M640 in cash, after they (Mrs Qhobela and P.W.3) had checked the stipend money, against the names of students listed in Exh B, in the presence of the accused.

According to P.W.3, in September, 1991 after they had collected from her office, the stipend money for distribution amongst the students, some of the field supervisors brought to her attention that the stipend cheques issued in respect of certain students had shortfalls. She reported the matter to the accused. In December, 1991 the shortfalls had still not been adjusted by the accused's office and P.W.3 was obliged to remind the accused who conceded that she had not yet made the adjustments. According to her P.W.3 made a list of the names of the students who had been affected by the shortfalls and the amounts thereof. She handed the list as Exh H and part of her evidence in this trial.

P.W.3 told the court that early in 1992 the office of the Internship Co-ordinator was abolished. She became a lecturer at the NTTC and had since been teaching Development Studies. She did not, therefore, know if the shortfalls in the payment of students whose names were listed in Exh H were eventually made good.

Makoae Matooane, Edward Lebamang Thulo, 'Mathabo Lucia Tikoe, John Phamotse Notsi and Bolelang Hilda Qhobela testified as P.W.12, P.W.13, P.W. 14, P.W.15 and P.W. 16, respectively, in this trial. They told the court that during the months of July to December 1991, when some students of NTTC were serving their teaching practice, they were field supervisors assisting P.W.3 in her work. They confirmed that the field supervisors collected, from the office of the co-ordinator, allowances/stipend in the form of cheques and cash for distribution amongst the students as described by P.W.3. Some of the cheques had shortfalls which were reported to P.W.3. The shortfalls were eventually paid to the students.

Lucy Makamane, 'Mathootse Phalatsi and 'Mathabo Machai gave evidence on oath as P.W.9, P.W.10 and P.W. 11, respectively. They told the court that they were school teachers. However, in 1991 they were second year students at NTTC when they did their teaching practice at Maseru site from July up to December. They confirmed that P.W.12 was one of their field supervisors. All the students who were doing their teaching practice at Maseru site were paid their stipend in the form of cheques with the exception of two, viz. P.W.10 and Marethabile Motlounq who were paid in cash.



According to P.W.13 he himself paid the shortfalls to two of the students whose names appeared in Exh H. The two students were Molietsana Mabula and Masehloho Mabula. The evidence of P.W.13 was in that regard confirmed by Molietsana Mabula and Masehloho Mabula who testified as P.W. 17 and P.W. 18, respectively, in this trial.

According to her, P.W.14 was the field supervisor at Mohale's Hoek in 1991. Nkuebe, one of the students whose name appeared in Exh H, did her teaching practice in Mohale's Hoek. In November, 1991 the stipend cheque of Nkuebe had a shortfall. Although she reported the matter to the office of the coordinator, P.W.14 no longer remembered if the shortfall was eventually made good. However, 'Manthema Nkuebe herself testified as P.W.8 and told the court that for July and August, 1991 she was paid allowance/stipend at the rate of M50 per month. When in August 1991 her colleagues were paid arrears of M60 she was not paid the arrears until the end of the teaching practice period in December, 1991. It was only after she had returned from the teaching practice and was back at the NTTC in 1992 that the M60 arrears were paid to her by P.W.3 herself.

It is worth noting that according to Exh H, Mposho 'Madaniele, Lesekele 'Masetho and Nkolonyane

Justina were three of the students whose stipend cheques had shortfalls. They served their teaching practice at Maseru, Butha-Buthe and Teyateyaneng sites, respectively. However, P.W.12, one of the field supervisors for Maseru site, did not mention Mposho 'Madaniele as being one of his students who had a shortfall in the payment of her stipend nor was Mposho 'Madaniele herself called as a witness to enlighten the court in this regard.

In her evidence in chief, P.W.14 told the court that all her students were paid their stipend during the period of their teaching practice. However, under cross-examination she testified that Nkuebe 'Malethema, one of the students whose name appeared in Exh H as having had a shortfall in the payment of her stipend, did not receive her cheque in either November or December, 1991. According to her, P.W.14 reported the matter to the co-ordinator but had no knowledge if the shortfall was eventually made good. Nkuebe 'Malethema, herself was not called as a witness.

According to Exh H, Nkoloanyane Justina, one of the students who had a shortfall in her payment of stipend served her teaching practice at Teyateyaneng site. Neither her field supervisor nor Nkolonyane Justina herself testified in this trial. The court had, therefore, no way of verifying whether or not the

shortfall was in fact eventually made good.

In her testimony P.W.4, 'Manathnial Qhobela told the court that she was a civil servant in the Government of Lesotho, attached to the Ministry of Education Headquarters. From 1989 up to 1993 she was attached to the Accounts Office of the NTTC as Accounts Clerk under the immediate supervision of the Accountant. When she first came to NTTC in 1989, the Accountant was a certain Mrs Polisa. When she left the NTTC in 1990 Mrs Polisa was replaced by the accused as the Accountant and, therefore, her immediate supervisor. Before the second year students at NTTC could commence their teaching practice in July 1991 she was instructed by the accused to obtain, from the Treasury Department, computer forms with which to prepare for payment of allowances/stipend to the students. She complied.

According to P.W.4, the accused then gave her a list of the names of students (Exh D) who were to go for their teaching practice in 1991. As it will be seen later in this judgment, the accused denied the evidence that she was the one who had handed the list of the names of students to P.W.4. According to the accused, the list had been handed to her by P.W.4 and

not vice versa. It will be remembered that in her evidence P.W.3 testified that after she had prepared it, she took the list of the names of students (Exh D) to the Accounts Office where she handed it to P.W.4. The evidence of P.W.3 corroborated, therefore, that of the accused and P.W.4 was, in all probabilities, mistaken in her evidence that the accused had handed to her the list of the names of students (Exh D).

Be that as it may, P.W.4 went on to testify that the computer forms were to be completed with the names of the students. Although P.W.4 no longer remembered how many names there were on the list given to her by the accused, she was sure that the list consisted of several pages which she and the accused shared between themselves to expedite the work of completing the computer forms. After they had been completed P.W.4 took the computer forms to the Treasury department which would issue cheques in the names of individual students for payment of their monthly allowances/stipend. There would be no need to repeat the procedure described above as the computer would henceforth automatically issue the cheques every month for the duration of the teaching practice period i.e. from July to December, 1991.

According to P.W.4, after the Treasury department had, in July 1991, issued stipend cheques which were

duly handed to P.W.3 for distribution amongst the students in their various teaching practice sites, the accused gave her a list of eight(8) students whose names had allegedly been omitted by the computer and did not, therefore, receive their allowances/stipend. Again on the instructions of the accused, P.W.4 prepared a payment voucher, Exh A1. She took Exh A1 to a certain Mr. Sehloho Mothae who was the Deputy Director at NTTC for authorization. After it had been authorised, P.W.4 took Exh A1 to the Treasury department where a cheque to the tune of M640, payable to "Director NTTC (M.Qhobela)" was issued. P.W.4 took the cheque and went to the bank where she herself cashed it. She returned to NTTC where she handed, to the accused, the amount of M640 in cash. That was the beginning of August, 1991. She did not know where the accused kept the M640 in the Accounts Office.

After she had obtained the M640 cash for the eight (8) students who had not received their cheques for the month of July 1991, P.W.4 expected that they would be paid by cheques, like the rest of the students for the remaining months of their teaching practice period viz. from August to December, 1991. When P.W.3 came to collect money for payment of the allowances/stipend to the student, at the end of August, 1991, P.W.3 realised, however, that the cheques for the eight (8) students were still not

included amongst the cheques which the accounts office had received from the Treasury department, as allowances/stipend for the internship students. In any event the accused gave her an envelop which contained double the amount of M640 in cash. After she and P.W.3 had checked the money against the list of students in Exh B, P.W.4 was able to give P.W.3 sufficient money to pay the 153 and the 8 students their allowances/stipend by cheques and cash, respectively.

When they were received for the months of September up to December 1991, the students' cheques still did not include the cheques for the eight(8) students who had to be paid by cash whilst the rest of the students were paid by cheques. According to P.W.4 either she or the accused collected the students' cheques from the Treasury department depending on who of them had gone to the Treasury department at the time the cheques were ready for collection. She denied, therefore, the suggestion that she alone was the person who always collected the cheques from the Treasury department. When she was the one who happened to be at the Treasury department and, therefore, collected them P.W.4 always showed the cheques to the accused, who was admittedly her senior officer, before putting them where cheques were normally kept viz. in the filing cabinet in the

Accounts Office. P.W.4 confirmed the evidence of P.W.3 that at the end of every month, the latter used to come to the accounts office to collect the money with which to pay the allowances/stipend to the students. On the instructions of the accused who always gave her an envelop containing an amount of M640 in cash P.W.4 would go to the filing cabinet from where she brought the students' cheques. After she and P.W.3 had checked both the cheques and the cash, often in the presence of the accused, P.W.4 would hand the money over to P.W.3. P.W.4 assured the court, therefore, that for the duration of the teaching practice period viz. from July to December, 1991, the accounts office of the NTTC had, every month, released to P.W.3 cheques issued in the names of individual students and cash amounting to M640 as payment of allowances/stipend to the 153 and the 8 students, respectively.

In her testimony P.W.4 confirmed the evidence of P.W.7 that the latter had in the past been the Director of NTTC and, therefore, the person empowered to authorise vouchers for payment at that institution. However, at the time the students of NTTC were serving their teaching practice in 1991 P.W.7 was no longer the Director of NTTC. He had moved to the Headquarters of the Ministry of Education as the Principal Secretary. According to her, P.W.4 knew

that during the time he was the Director of NTTC, P.W.7 often took trips outside the country when he would be away from the college for a number of days. In order that his absence from NTTC might not adversely affect the work of the accounts office, P.W.7 used to sign, in blank, payment voucher forms which he handed to the Accountant for safe custody and use, should the need to do so arise, during his absence.

P.W.4 told the court that in September, 1991, the accused gave her a list of 190 names of students, who were purportedly doing their teaching practice in the field and a payment voucher form already signed, in blank, by P.W.7. The accused instructed her to prepare a payment voucher so that the students whose names appeared in the list might be paid their allowances/stipend at the rate of M80 per student. P.W.4 considered the accused's instructions that a voucher should be prepared to pay allowances/stipend to the students, rather abnormal because she knew that the students were paid by cheques issued, by the Treasury department, in their individual names. When she brought that to her attention the accused told P.W.4 to leave the matter with her. P.W. 4 then carried out the accused's instructions and accordingly prepared the payment voucher, Exh A3, payable to "Director NTTC (M.A. Mokokoane)". After it had been



entered in the Vote Book (Exh E) Exh A3 was dispatched to the Treasury Department for the issuance of a cheque.

In October 1991, the accused again gave P.W.4 a list of the names of students purportedly serving their teaching practice in the field and a voucher form pre-signed, in blank, by P.W.7 with instructions that she should prepare a payment voucher in order to pay allowance/stipend to the students. P.W.4 complied and accordingly prepared the payment voucher, Exh A4 payable to "Director NTTC (M.A. Mokokoane) which was entered in the Vote Book (Exh E). Exh A4 was duly dispatched to the Treasury department for the issuance of a cheque.

When she was shown payment vouchers Exh A, Exh A2, Exh A5 and Exh A6 for the months of July, August, November and December, 1991, respectively, P.W.4 told the court that she did not know the circumstances under which they had been prepared. She, however, assured the court that she knew the handwriting of the accused very well. Judging by the handwriting in which they were prepared P.W.4 told the court that Exh A, A2, A5 and A6 were prepared by the accused herself.

P.W.4 told the court that she had no personal knowledge whether or not as a result of payment

vouchers Exh A. A2, A3, A4, A5 and A6, the Treasury department did issue cheques to the tune of M15,200 which was the amount reflected on each of the six (6) exhibits. She denied, in particular that after she had cashed the cheques issued by the Treasury department as a result of the payment vouchers, Exh A, A2, A3, A4, A5 and A6, the accused handed the money to her.

P.W.5, Sehloho Mothae, testified that he was the Deputy Director of NTTC since November 1987. As such he was not empowered to authorise vouchers for payment. Only the Director was empowered to do so at NTTC.

After P.W.7 who was the Director of NTTC had moved to the Headquarters of the Ministry of Education to assume the duties of Principal Secretary he (P.W.5) was appointed the Acting Director of the College and, therefore, empowered to authorise payment vouchers. That was with effect from 1st March, 1991.

When the second year students of NTTC commenced their teaching practice in July 1991, P.W.5 was, therefore, already the Acting Director. The accused and P.W.4 were the Accountant and the Accounts Clerk, respectively, at the college. P.W.5 remembered that on one occasion during the month of July 1991 PW. 4

brought to him the payment voucher, Exh A1 to which was annexed a list of eight (8) names of students who were allegedly serving internship/teaching practice and had inadvertently not been paid their allowances/stipend. P.W.5 confirmed the evidence of P.W.4 that he consequently authorised the payment voucher, Exh A1, by appending his signature thereto.

P.W.2, Tlohang Sekhamane, testified that he was a Lecturer at the National University of Lesotho. From 1991 to 1993 he was the Director of NTTC. He remembered that in December 1991 he was already the Director at NTTC when one day he found the payment voucher, Exh A6 placed in his tray for signature. Exh A6 was apparently for payment of an amount of M1,520 as stipend to 19 internship students whose names were listed in an annexure thereto. As he was aware that during their teaching practice students were paid by cheques issued in their individual names by the Treasury department, P.W.2 called the accused, who was the Accountant at NTTC to his office for an explanation. In her explanation, the accused told him that the names of the 19 students had been omitted by the computer at the Treasury department. The students did not, therefore, receive their stipend cheques. In the circumstances a payment voucher had to be prepared in order that the students might be paid their stipend.

According to him, P.W.2 was not quite convinced with the accused's explanation. He sought verification of accused's explanation from P.W.5 who confirmed that where the computer had omitted the names of some students it was permissible to pay those students by voucher. It was only then that P.W.2 authorised Exh A6 by appending his signature thereto.

However, Exh A6 was later on shown to him by P.W.6, who was at the time auditing the account books of NTTC, as being suspicious. On examining it, P.W.2 realised that Exh A6 was not in the condition he had signed it. The list of the names of students annexed to Exh A6 had been changed to read 190 instead of 19 students. The amount reflected on Exh A6 had also been altered to read M15,200 instead of M1,520. The alteration on the amount reflected in Exh A6 had initials which were not his. P.W.2 told the court that if the alterations were there at the time he signed Exh A6, he would have definitely added his own initials thereto because he, as the Director of NTTC, was the person applying for the release of funds from the Treasury department.

According to P.W.2, after P.W.6 had shown him Exh A6 he took it to the accused and questioned her about the anomaly on it. However, the accused told him she did not like to be investigated in that manner. He

then left her alone and returned Exh A6 to P.W.6.

Returning now to his evidence, P.W.7 told the court that he left NTTC for the Headquarters of the Ministry of Education where he assumed the duties of Principal Secretary on 18th January, 1991. He confirmed the evidence of P.W.5 that the Director of NTTC was the only person empowered to authorise payment vouchers by signing them. When he was the Director of NTTC, the practice was to bring to him payment vouchers together with the vote book. After satisfying himself that proper entries had been made in the vote book and funds were available to meet the amounts reflected in the payment vouchers P.W.7 would sign. The signed payment vouchers would then be taken to his Personal Secretary who put the line stamp impression of the Director of NTTC on the vouchers. P.W.7 never himself wrote his designation below his signature on the payment vouchers

P.W.7 confirmed the evidence that there was, at NTTC a system whereby students in their second year of studies went to various sites in the country to do teaching practice. During the period of their teaching practice, the students were paid stipend in the form of cheques issued in their individual names by the Treasury Department.

During his turn of office as the Director of NTTC there were occasions when P.W.7 had to travel outside the country on official duties. On those occasions he used to sign, in blank, payment voucher forms which he handed to the accused, as the Accountant, for safe custody and use during his absence. The reason for so doing was especially to enable the accused to pay for purchase of perishables such as fresh food supplied to the students of the college. It was never the intention that the presigned voucher forms would be used for any other purpose, in particular payment of stipend to internship students who were paid by cheques issued in their individual names by the Treasury Department.

P.W.7 was positive that during the months of July up to December, 1991 when payment vouchers, Exh A, Exh A2, Exh A3 Exh A4 and Exh A5, were apparently prepared and authorised, he was already the Principal Secretary for Education at the Headquarters of the Ministry of Education and, therefore, no longer the Director of NTTC. He assured the court that he did not at that time, authorise the exhibits for payment. Nor were the vouchers ever brought to him at the Ministry of Education for authorization. He told the court that what could have happened was that the accused still had some of the pre-signed voucher forms which were apparently used to prepare Exh A, Exh A2, Exh A3, Exh

A4 and Exh A5.

In her defence, the accused confirmed that, at all material times, she and P.W.4 were the Accountant and the Accounts Clerk respectively, at the NTTC. P.W.4 was already working at the college when she (Accused) first joined NTTC on 2nd January, 1990. According to the Accused, there was no proper handing over between herself and Mrs Polisa from whom she took over as Accountant at the NTTC. A fact which was, however, denied not only by P.W.4 but also P.W.7.

It may, perhaps, be necessary to mention that P.W.4 told the court that she was in the accounts office on the day the accused first arrived at NTTC and she saw Mrs Polisa actually showing some files to her. As she was, however, not conversant with the procedure of handing over, P.W.4 would not know whether or not what Mrs Polisa and the accused were doing amounted to proper handing over.

It may be mentioned that in his evidence P.W.7 told the court that a few days after Mrs Polisa had left NTTC, the accused reported to him that there had not been handing over between herself and Mrs. Polisa. As she had been transferred to the Headquarters of the Ministry of Education under which NTTC was a

department, P.W.7 immediately made arrangements for Mrs Polisa to return to NTTC so that she could make a proper handing over to the accused. Mrs. Polisa accordingly came back to NTTC for the purpose of making proper handing over to the accused.

There can be no doubt from her evidence that the accused was aware that when she took over from Mrs. Polisa a proper handing over had to be made. If it were true that Mrs. Polisa did not hand over to her even after P.W.7 had recalled her to NTTC, the accused would no doubt have reported the fact to him. She did not. I am inclined, therefore, to believe that even if it were true that there was no handing over between the accused and Mrs. Polisa when the latter first left NTTC, there was handing over between them after P.W.7 had recalled Mrs. Polisa to the college for that purpose.

Be that as it may, the accused went on to tell the court that before she came to the college in January, 1990, she knew nothing about the system of paying stipend to NTTC students who were doing their teaching practice. However, one day in September, 1990 she was at the Treasury department when a certain girl gave her a message for P.W.4. The message was that the accused should notify P.W.4 that her cheques were ready for collection. On her return to NTTC, the



accused gave the message to P.W.4 and at the same time inquired from P.W.4 what the cheques were for. In reply P.W. 4 told her that they were stipend cheques for the NTTC students who were doing their teaching practice. That was how she (accused) came to know that NTTC students who were doing their teaching practice were paid stipend by cheques issued by the Treasury Department. Thereafter the accused used to collect the cheques whenever she found them ready for collection during her visits at the Treasury department. She subsequently handed the cheques to P.W.4 at the NTTC.

Although P.W.4 had told her that the duration of the teaching practice was for six months, viz. from July to December, 1990, the cheques for payment of stipend to the students continued to be issued until March, 1991 when the accused pointed out the anomaly to a certain Mr. Ramoea at the Treasury Department. The cheques which had been issued after the expiry of teaching practice period of 1990 together with similar cheques of previous years were kept in the filing cabinet at the accounts office of the NTTC. P.W.4 was supposed to cancel and return them to the Treasury department together with their journals i.e. forms which were completed in respect of the cheques indicating that such cheques had been cancelled.

The accused conceded that at the time he was doing his work at NTTC P.W.6 took possession of a large number of stale cheques. The cheques had been issued to pay stipend to students after the period of their teaching practice had expired. They were waiting for their journals to be prepared by P.W.4 before they could be returned to the Treasury department. The accused handed the cheques to P.W.6 after she had found them lying in the filing cabinet and the desk drawer of P.W.4 who was not in at the time. Assuming the correctness of her evidence, there is no doubt in my mind that before the start of the teaching practice period in July 1991, the accused was aware that the students were paid their stipend by cheques issued at the Treasury department.

In her evidence, the accused denied that during his turn of office as the Director of NTTC, P.W.7 ever gave her voucher forms which he had signed in blank for her safe custody and use to purchase fresh rations for students whilst he was away from the college on official duties outside the country. According to the accused, P.W.7 always discussed such matters with P.W.4. The evidence of P.W.7 was however, corroborated in that regard by P.W.4 who told the court that she did not even know where the accused kept the voucher forms that had been pre-signed by P.W.7 before going out of the country on official

trips.

In my view, once P.W.7 had signed them, in blank, the voucher forms were open to abuse and for that reason very important documents, indeed. I find it incredible that P.W.7 could have entrusted such important documents to P.W.4 who was admittedly an accounts clerk and, therefore, a junior officer in the accounts section of the NTTC. For this reason I am inclined to accept as the truth the evidence of P.W.7 corroborated by that of P.W.4 that the presigned voucher forms were left in the custody of the accused who was admittedly the Accountant and, therefore, a senior officer in the accounts section of the NTTC.

According to the accused, in June, 1991 i.e. before the start of the teaching practice period in July, 1991, P.W.4 informed her that the list of the names of students who were to go for their teaching practice was available. P.W.4 pointed out that the mode of paying stipend to students by cheques, was troublesome and multiplying work. She showed her a large number of journals which had to be prepared as a result of paying students by cheques. She also pointed out that the Treasury department invariably issued cheques incorrectly. Wherefor P.W.4 suggested that for the 1991 teaching practice period students should be paid by cash instead of cheques. According

to her at the end of every month, the accused had to prepare a status of funds report for the Director of NTTC and the Headquarters of the Ministry of Education. She always experienced problems as to where to find the information for the expenditure incurred by payment of stipend to students by cheques. She did receive from the Treasury department computer prints out which reflected how much money had been used every month by NTTC. The prints out did not, however, reflect the expenditure incurred by payment of stipend to students by cheques. For all these reasons the accused agreed that the mode of paying stipend to students should be changed as suggested by P.W.4.

The accused told the court that at the time she and P.W.4 agreed that the stipend should be paid to students by cash instead of cheques she asked the latter to remind her of that at the time she would be preparing payment vouchers for wages. At the beginning of July, 1991 the accused was preparing payment vouchers for wages when P.W.4 brought to her a list of 190 names of students who were allegedly doing their teaching practice and had, therefore, to be paid stipend. At the same time P.W.4 gave her a voucher form signed, in blank, by P.W.7 who was by then the Principal Secretary for Education. When she asked her why she wanted her to use a voucher form

which P.W.7 had signed in blank, P.W.4 explained that the authority at NTTC viz. P.W.5 who was the Acting Director of NTTC did not understand the procedure for authorising payment vouchers and she (P.W.4) had had to go to the Ministry of Education and seek the assistance of P.W.7. According to her, the accused was satisfied with P.W.4's explanation on the basis of which she prepared the payment voucher, Exh A, payable to "Director NTTC (MA. Mokokoane)". Exh A was then dispatched to the Treasury department together with other vouchers which the accused had been preparing.

According to her, the accused knew nothing about the computer forms which had to be completed in the names of the students at the beginning of the teaching practice. She denied, therefore, the evidence of P.W.4 that when they were to be completed she and the accused shared the computer forms between themselves in order to expedite the work.

For the months of August and November, 1991, the accused was again preparing payment vouchers for the wages when P.W.4 gave her a list of 190 names of students and voucher forms signed, in blank, by P.W.7 with the request that she (accused) should prepare vouchers for payment of stipend to the students who were allegedly doing their teaching practice. The same explanation, viz that P.W. 5 did not understand

the procedure of authorising payment vouchers and the assistance of P.W.7 had to be sought was given.

It is to be remembered that in her evidence P.W.4 told the court that in July, 1991 she took exh A1 to P.W.5 who authorised it for payment. P.W.4 was in that regard corroborated by P.W.5 himself. The story that in August and November, 1991 P.W.7 had to authorise Exh A2 and A5, respectively, for payment because P.W.5 did not understand the procedure cannot, therefore, be correct.

Be that as it may, on the basis of the explanation given by P.W.4, the accused complied with the request by preparing exhibits A2 and A5 both payable to "Director NTTC (M.A. Mokokoane)". Exhibits A3 and A4 were, however, prepared by P.W.4 herself. They were also payable to "Director NTTC (M.A. Mokokoane)".

After they had been prepared, Exhibits A, A2, A3, A4 and A5 were dispatched to the Treasury department, together with the other payment vouchers that the accused had been preparing at the time P.W.4 gave her the list of 190 names of students and the voucher forms signed, in blank, by P.W.7.

It is significant that P.W.4 denied to have given to the accused the list of 190 names of students and voucher forms signed, in blank, by P.W.7 as alleged. In her own words, the accused told the court that at the time P.W.4 allegedly gave her the voucher form signed, in blank, by P.W.7 to prepare the payment vouchers Exhibits A, A2 and A5 she (accused) was preparing other payment vouchers which were also dispatched to the Treasury department. There was no suggestion that these other payment vouchers were referred to the Ministry of Education for authorization by P.W.7. It can be assumed, therefore, that the other payment vouchers were authorised for payment at NTTC. Assuming the correctness of this assumption I find it unreasonable to believe the accused's story that she had to use voucher forms signed, in blank, to prepare Exh A, A2 and A5 because the pre-signed forms were given to her for use by P.W.4 with the explanation that P.W.5 did not understand the procedure for authorising payment vouchers. The truth of the matter is, in my opinion, that the accused is trying to hide away the fact that the presigned voucher forms were left in her custody as alleged by P.W.7. She used some of the forms to prepare Exh A, A2 and A5 whilst others she gave to P.W.4 to prepare Exh A3 and A4 as testified by P.W.4 herself.

According to the accused when she admittedly prepared payment voucher Exh A6 P.W.4 was not present to give her a voucher form signed, in blank, by P.W.7. She used an ordinary payment voucher form to prepare Exh A6. She, however, denied the evidence of P.W.2 that at the time she brought it to him for authorization Exh A6 reflected an amount of M1,520 being stipend for only 19 students whose names she said had been omitted by the computer. The evidence of P.W.2 that Exh A6 had been altered after he had authorise it for payment was, to a certain degree supported by the fact that the amount of M15,200.00 therein reflected appeared to have alterations. I consider it incredible that a senior officer in the position of P.W.2 would falsely implicate the accused in a matter of this nature. I would accept as the truth, therefore, the story of P.W.2 and reject as false the accused's version on this point.

The accused conceded that, as a result of payment vouchers, Exh A, A2, A3, A4, A5 and A6 the corresponding cheques Exh F, F1, F2, F3, F4 and F5 payable to "Director NTTC (M.A. Mokokoane)" were issued by the Treasury department. The amount reflected on each of these cheques was M15,200.00. She took the cheques, went to the Bank, endorsed and cashed them. She returned to NTTC where she handed the amounts of M15,200 to P.W.4 who, however, denied



that the accused ever gave her the amounts of M15,200 in cash, as alleged.

It is significant that although she claimed to have handed these huge amounts of cash to P.W.4 the accused made no record of this nor, indeed, did she make a follow up to ascertain that the money had reached the office of the co-ordinator (PW.3). I find it simply unbelievable that the accused, who was the Accountant at NTTC, could have handed those large amounts of cash to P.W.4, the accounts clerk, as she claimed she did, without keeping a record of any sort whatsoever that she had done so. I am inclined to reject as false the accused's story that she handed the amounts to P.W.4 and accept as the truth the version of the latter that she did not.

Considering the evidence in its entirety I am satisfied that in 1991, the second year students of NTTC proceeded for their teaching practice at various sites throughout the country. The students were altogether 161 in number. During the teaching practice period, viz. from July to December, 1991, each student was to be paid monthly stipend. Of the 161 students 153 were duly paid their stipend in the form of cheques issued in their individual names by the Treasury Department. In order to obtain funds with which to pay stipend to the remaining eight (8)

students, payment voucher, Exh A1, was admittedly prepared and presented to the Treasury department by P.W.4. On the basis of Exh A1, the Treasury department did issue a cheque to the tune of M640 which was cashed by P.W.4. Although the accused denied the evidence of P.W.4 that after cashing the cheque, the latter handed the money to her, it was not really disputed that the amount of M640 was eventually paid to the eight (8) students as their stipend for the month of July, 1991. Consequently no criminal charge was brought against the accused in connection with the amount of M640 and rightly so, in my opinion.

For the months of August to December, 1991, there were still no cheques issued in the individual names of the eight (8) students by the Treasury department. Nor were any payment vouchers prepared and presented to the Treasury department for the release of funds with which to pay their monthly stipend. The eight (8) students were, however, admittedly paid their stipend in cash for the months of August to December, 1991. It is not clear from the evidence where the cash money with which the eight (8) students were paid their stipend for the months of August to December, 1991 came from. Be that as it may, the end result is that all the NTTC students who were doing their teaching practice in 1991 eventually received their stipend either in the form of cheques issued in their

individual names by the Treasury department or cash.

Notwithstanding the fact that the students were duly paid their monthly stipend either by cheques issued in their individual names by the Treasury department or in cash for the duration of the teaching practice period, it is common cause that payment vouchers, Exh A, Exh A2, Exh A3, Exh A4, Exh A5 and Exh A6, in the amounts of M15,200 each, were prepared and presented to the Treasury department in July, August, September, October, November and December, 1991, respectively. The payment vouchers purported to be for the release of funds to pay stipend to the students who were serving their teaching practice in 1991. Acting on Exh A, Exh A2, Exh A3, Exh A4, Exh A5 and Exh A6 the Treasury department issued cheques which were handed in as Exh F, Exh F1, Exh F2, Exh F3, Exh F4 and Exh F5. Each of the cheques was to the tune of M15,200. The accused admittedly went to the Bank, cashed all the six (6) cheques, took possession of the cash money and returned to NTTC. As it has already been pointed out earlier, according to her, on her return to NTTC the accused handed the money to P.W.4, a fact which was, however, denied by the latter. For reasons already stated, I have rejected as false the story of the accused and accepted as the truth P.W.4's version in this regard.

The salient question that immediately arises for the determination of the court is whether or not when she caused Exh A, A2, A3, A4, A5 and A6 to be presented to the Treasury department, cashed Exh F, F1, F2, F3, F4 and F5 and took the cash money, purportedly for payment of stipend to the students, the accused was aware of the fact that the students were already being paid their monthly stipend by cheques issued in their individual names by the Treasury department and they were not, therefore, entitled to the money.

The accused did not dispute that when the students served their teaching practice in 1990 she was already the accountant at NTTC. She knew, therefore, that the practice was to pay the stipend of students by cheques issued in their individual names by the Treasury department. According to her, in 1991, the accused agreed with the suggestion of P.W.4 that the stipend be paid in cash rather than cheques, a fact which was, however denied by the latter.

It is, perhaps, worth mentioning in this regard that in the course of their evidence, P.W.2 and P.W.5 who were the Director and the Deputy Director, respectively, at NTTC in 1991, told the court that to their knowledge students serving teaching practice had always been paid stipend by cheques issued in their

individual names by the Treasury department. They were not aware, therefore, of the agreement to change the system of paying stipend to students as alleged by the accused.

I find it most unlikely that P.W.4 and the accused could have effected a change of the mode of paying stipend to students, in the manner the latter wishes the court to believe, without notifying the most senior officials at NTTC, viz. P.W.2 and P.W.5. In my view the truth of the matter is that no such change had ever been effect and in her denial the accused is simply not being honest with this court.

In her evidence, P.W.3 told the court that whenever she went to collect stipend money from her office in 1991, the accused used to instruct P.W.4 to serve her and at the same time hand to her (P.W.4) an envelop containing cash amount sufficient to pay the eight (8) students who were not paid by cheques issued in the individual names of students by the Treasury department. P.W.4 always complied and went to the office cabinet from where she brought cheques that had been issued in the individual names of the students by the Treasury department. Before taking the money from the office of the accused both the cheques and the cash contained in the envelop were checked against the

register, Exh B, by P.W.4 and P.W.3 in the presence of the accused herself. The evidence of P.W.3 in that regard was corroborated by P.W.4. It is, indeed unthinkable that the accused who was the accountant and, therefore, the person in-charge of the accounts section at the NTTC could have been unaware of the fact that cheques issued in the individual names of the students by the Treasury department were received by her office for payments of stipend to students during the whole teaching practice period viz from July to December, 1991. I consider it reasonable to accept as the truth the evidence of P.W.3 corroborated by P.W.4 and reject as false the accused's uncorroborated denial on this point.

It is to be remembered that in his evidence, P.W.2 told the court that when in December, 1991 he found Exh A6 placed in his tray for authorization he was surprised that contrary to the normal practice of paying stipend by cheques issued, in the individual names of students, by the Treasury department he was required to sign a payment voucher for the release of funds with which 19 students, purportedly serving teaching practice, would be paid their stipend. Consequently P.W.2 summoned the accused to his office for a satisfactory explanation before the voucher could be authorised for payment. In reply the accused explained that the computer had erroneously omitted

the names of the affected students who had not, therefore, received their stipend cheques. In the circumstances, it was proper for the payment voucher, Exh A6, to be prepared for the release of funds with which to pay the affected students.

For reasons stated earlier, I have found the evidence of P.W.2 to be the truth and rejected as false the version of the accused on this point.

From the foregoing, it seems to me the accused was aware that at the time the students of NTTC were serving teaching practice in 1991 the stipend was paid by cheques issued in their individual names by the Treasury department. The question I have earlier posed, viz. whether or not when she caused Exh A, A2, A3, A4, A5 and A6 to be presented to the Treasury department, cashed the cheques, Exh F, F1, F2, F3, F4 and F5 and took the cash money, purportedly for payment of stipend to the students, the accused was aware of the fact that the students were already being paid their monthly stipend by cheques, issued in their individual names by the Treasury department and were, therefore, not entitled to the money, must in my finding, be answered in the affirmative.

Assuming the correctness of my finding, it must

be accepted that by causing Exh A, A2, A3, A4, A5 and A6 to be presented to the Treasury department, in the manner she did, the accused clearly committed a misrepresentation. On the basis of that misrepresentation she obtained from the Treasury department, the amount of money reflected on the six (6) counts against which she now stands charged.

In her evidence, the accused told the court that after she had obtained it, she handed all the money to P.W.4, a fact which was, however, denied by the latter. For reasons stated earlier in this judgment, I have rejected as false the story of the accused and accepted as the truth P.W.4's version on this point. The question that immediately arises is whether or not in taking the amounts of money reflected in the six (6) counts, in the manner she did, the accused did so with the intention to deprive the owner thereof, viz. the Treasury department or Lesotho Government, permanently of its property. In her own words, the accused testified that she did not know what had become of the money which was no longer in her possession. Assuming the correctness of her evidence, it seems to me reasonable to infer that in taking the money, in the manner she did, the accused had intention to deprive the owner thereof permanently.



It was common cause that some students were paid shortfalls, owed to them, in cash. From August to December, 1991, the stipend of eight (8) of the students was also paid in cash. It was suggested, in argument, that the cash used to make good the shortfalls and pay the stipend of the eight (8) students was part of the amounts of M15,200 which the accused admittedly obtained from the Treasury department by means of Exh A, A2, A3, A4, A5 and A6. If part of the money was used to make good the shortfalls and pay stipend to eight (8) of the students, the accused could not, therefore, be properly convicted of theft of all the amounts of M15,200 reflected in each of the six (6) counts.

In my finding, there was no evidence that the cash used to make good the shortfalls and pay stipend to the eight (8) students was part of the money that the accused had obtained from the Treasury department by means of Exh A, A2, A3, A4, A5 and A6. Indeed, in her own evidence, the accused testified that she did not know what had become of that money. That being so, the suggestion that the cash used to make good the shortfalls and pay the stipend of the eight (8) students was part of the money that the accused had obtained from the treasury department by means of Exh A. A2, A3, A4, A5 and A6 was pure speculation on which

the court could not properly base its decision.

In the result, I come to the conclusion that considered as a whole, the prosecution evidence has established beyond a reasonable doubt the commission of the offences against which the accused stands charged. I accordingly find her guilty as charged on all the six (6) counts.

#### SENTENCE

Having convicted the accused person, it now remains for the court to determine the punishment that will be appropriate for her in the circumstances. In mitigation of the punishment, the court has been invited to consider a number of factors, viz. that the accused has no record of previous convictions and she is, therefore, a first offender. Counsel for the defence has, on behalf of the accused person, referred the court to a number of personal factors to be considered in mitigation of the sentence. He has tabulated them so well that there is no need for me to go over them again save to say they are all factors that can properly be taken into account in determining what punishment is appropriate for the accused person in the circumstances of this case.

I also take into account the fact that when she took over as accountant at NTTC, the accused found in existence the system of signing, in blank, payment voucher forms, which system was, for obvious reasons, open to all sorts of abuse. Such system was, in my view, bound to present upon the accused person a great temptation to steal and should never have been allowed to exist.

I am not prepared, however, to turn a blind eye on the seriousness of the offences with which the accused person has been convicted. Lesotho is a poor country in which many people find it difficult to get employment. The accused is one of the few lucky persons to have been given employment. In the course of her employment she was given a position of trust. She betrayed her employers by making a complete misuse of that position. The courts' warnings that a diem view will be taken of people who think they can steal Government money, with impunity, seem to be going unheeded. There is, therefore, the need to impose a sentence that will deter the accused and people of her mind from a repetition of this sort of a thing.

The following punishment will, in my view, meet the justice of the case and the accused is accordingly sentenced:-

Count I : Six (6) years imprisonment

Count II : Six (6) years imprisonment

Count III : Six (6) years imprisonment

Count IV : Six (6) years imprisonment

Count V : Six (6) years imprisonment

Count VI : Six (6) years imprisonment

In view of the factors that have been taken into account in mitigation of the accused's punishment, the sentences will, however, run concurrently.

Both my assessors agree.

B. K. MOLAI

JUDGE

13th February, 1995.

For Crown: Mr. Lenono  
For Defence: Mr. Pheko.