

CRI/A/35/93

IN THE HIGH COURT OF LESOTHO

In the Appeal of :

TSEKO NTLALOE

Appellant

vs

R E X

Defendant

JUDGMENT

Delivered by the Honourable Mr. Justice T. Monpathi  
on the 16th day of March 1994

This is an appeal from the magistrate Court for the district of Berea under case no. CR 287/92. The accused in the court quo was charged with the offence of having contravened Section 3 of Deserted Wives and Children Proclamation No. 60 of 1959. In that upon or about the period between November 1991 and April 1992 and or at near Ha Mphanya in the district of Berea the said accused wrongfully and unlawfully and being able to work failed to maintain his wife named Matsotang Ntlaloe and child Tsotang Ntlaloe aged 14 months with food and clothing as required by the Statute. He was found guilty on the 31st July, 1992.

The Appellant was represented by Advocate Mosito while the Crown was represented by Miss Nku in this appeal on the 16th February 1994. The record reveals that there were two witnesses for the Crown namely 'Matsotang Ntlaloe and 'Mateboho Rants'o. It will appear that 'Mateboho Rants'o is the mother of the complainant, the complainant being the wife of the Appellant. There were two witnesses for the defence namely Appellant himself and Esther Ntlaloe. I have indicated that the Appellant was convicted as charged. The Appellant duly noted an appeal to this Court on the 17th this day of August 1992. The grounds of the appeal are the following:-

1. The learned magistrate misdirected himself in law by convicting Appellant without even ascertaining the existence of mens rea for committing the offence under Section 3 of the Proclamation.
2. The learned magistrate misdirected himself by holding that Appellant had not been supporting the complainant and the said child prior to the parting of the Complainant as there was no proof beyond reasonable doubt justifying such a finding.
3. The learned magistrate misdirected himself by not inquiring into the Appellant's financial obligations

before making an order of maintenance.

4. The learned magistrate misdirected himself by holding that Complainant was in need of maintenance in the amount ordered more particularly:

- (a) There was no proof beyond reasonable doubt that the Complainant was in need or destitute.

- (b) There was no proof beyond reasonable doubt that the Appellant has deserted Complainant.

5. Learned magistrate erred in law by not stating the reasons for the imposition of his sentence at the time of imposition thereof.

The Learned Counsel Mr. Mosito got into well motivated argument on behalf of the Appellant. It will be noted that the Appellant had been unrepresented in the court a quo. It is also to be noted that, at the stage when the Accused was asked to address the Court, as after the leading of the two defence witnesses he elected to remain silent. Again he still remained silent when he was asked to make a statement in mitigation.

What becomes very important at this stage is this cardinal fact that the learned magistrate does not seem to have made a reasoned statement of how he arrived at his conclusions, which witness did believe and on which aspect? What is it that impressed him in the Crown's case or in the defence case? This is totally lacking. I am saying that this is cardinal to the extent that after Mr. Mosito's address, Miss Nku, most wisely picked on this aspect of the absence of the judgment of the learned magistrate. To submit that in the absence of a judgment this Court was disabled to even consider the merits of Mr. Mosito's argument. Indeed it is mandatory for the learned magistrate to have made such a judgment in the manner I have indicated. This means therefore that this Court would not be able to look into any aspect of this case. Whether Mr. Mosito's grounds for objection as contained in this Notice of Appeal were valid or not Miss Nku submitted that this was beyond this Court to judge. Miss Nku made her point in such a strong manner that she felt that she herself would not even be able to comment in anyway, in response to what Mr. Mosito has said in his argument. I thought this situation was very unfortunate. It was very unfortunate not only because I would have been inclined to allow the appeal in favour of the Appellant, but because I was bound not to investigate this matter at all. I agree with both Counsels that there would be no basis upon which I would look into these proceedings to order this way or that way, as regards

the merits.

One thing that exercised my mind very seriously was the type of order that I would have to make. By this I mean whether it would be wise to refer the proceedings to this Magistrate who presided over this matter. I happen to know that this magistrate would not be easily available. In that regard Counsel suggested that I would have to impose a time limit as to when and within what time magistrate would have to react in rendering a judgment. I thought that this brought in a great deal of inconvenience and impracticability. It would be uncertain as to whether this magistrate would react if at all he decided to react. I greatly suspected that this would be throwing this appeal to dogs or these proceedings into a situation where they would languish without any form of response.

One must consider that this proceedings will be hanging over the Accused/Appellant over this whole time. That is where the magistrate would be asked to render judgment. I felt it was unjust and unwise. I thought that I had to do something that is very certain in itself.

I therefore order that the proceedings are quashed. The Director of Public Prosecutions is given leave to instruct that this charge be started de novo. I have indicated that I was

influenced by the fact of the uncertainty of throwing back these proceedings to a situation where it would be uncertain as whether they would be attended to. I direct that any magistrate can deal with this charge when it is brought afresh as I have ordered. This I did in the interest of justice and certainty.



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T. MONAPATHI  
Acting Judge

16th March 1994

For the Appellant : Mr. Mosito

For the Defendant : Miss Nku