

IN THE HIGH COURT OF LESOTHO

In Appeal of:

MOFIHLI MOTSEARE

vs

R E X

REASONS FOR JUDGMENT

Delivered, by the Honourable Mrs Justice J.K. Guni on  
the 5th day of September, 1995  
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The appellant, in this matter, was charged and convicted of assault common at Leribe Subordinate Court. He was sentenced to six months imprisonment without an option of a fine.

The appellant has appealed against that sentence only on the grounds that it is a very severe sentence which induces a sense of shock especially in the light of the facts of this case. Briefly, the facts of this case as outlined by the public prosecutor and accepted by the appellant are as follows:-

On 6th October, 1994 this appellant attacked the complainant. The appellant was armed with a stone and a knife. The complainant ran for his dear life so fast that the appellant could not catch up with him. On three different occasions this appellant chased after this same complainant. On the three occasions the appellant was armed with a knife.

The Counsel for the appellant, Mr. Teele contended on behalf of the appellant that an effective six months term of imprisonment for a young, first offender who pleaded guilty to the charge is inappropriate. These factors should have been taken into account in his favour when considering appropriate sentence. Mr. Teele suggested, with the concurrence of Ms. Nku who appeared for the Crown, that this Court, if it sees fit, should wholly suspend that six months imprisonment.

It was on 6/10/94 when the appellant chased after the complainant whom he wanted to assault with a knife. On 7/10/94 the appellant was before Court to answer the charge in respect of this action. He pleaded guilty. He was sentenced to six months imprisonment without an option of a fine. On 12/10/94 an application for bail pending appeal was heard and granted.

At the age of 24 years this appellant is a major. His Counsel still described him as a person of tender years. Technically, in terms of the age of Majority Act he is not a

person of tender years. The facts of the case reveals such an alarming degree of immaturity, that I begin to appreciate the sentiment expressed by Mr. Teele. On three different occasions armed with a knife, this appellant chased this complainant. He is in the process of forming a habit if he has not yet established one already. He appears to be enjoying himself by inflicting fear of personal injury on this complainant. The temporary command of such limited power over someone can be of joyous satisfaction to a very immature person. This appellant may have attained the age of majority but mentally he seems still very immature. Apparently the Court acquo has been greatly influenced by this bad behaviour to pass this severe sentence. The Court felt a need to teach the appellant a lesson. It was correct to some extent. It only erred by looking only at the protection of the public and paying little or no attention at the correction needed by this appellant. When this appellant is corrected and he successfully changes his bad behaviour it will also be for the benefit of the society, as a whole to have this appellant as a member of the society, who respects other people and their rights.

The late Honourable Judge P. Mofokeng in Mojela v Rex 1977 LLR at page 321 pointed out that when sentencing a convicted person different considerations come into play and these must be carefully weighed both as affecting the person of the convict and the society as a whole. When carrying out this exercise of sentencing mistakes are made. Sometimes, factors which must be taken into account are not so taken into account.

At times, over weight emphasis is placed on some factors at the expense of others which should be of paramount consideration.

In our present case even although the crime committed by this appellant was technical and not actual physical assault, he was sentenced to 6 months effective term of imprisonment without any option of a fine. This is extremely severe, no consideration was made of his personal circumstances and of the likely repercussions to the society Rex v Mutizwa 1968 (4) SA 278. As the first offender he must be encouraged to change from that bad behaviour. Putting him straight into jail for such a long period would only expose him to the influence of undesirable elements - to come out of jail as a total social misfit. His demonstration for Immaturity shows that he needed to be given a chance to grow up and learn. The Court should endeavour to afford him that opportunity to change by passing suspended sentence. Sentences can be wholly or partially suspended depending on the circumstances of each case.

The sanity of the suspended sentence is the fact that, during that period of suspension, it remains a constant reminder to the wrong doer that should he transgress again, the long arm of the law is ready to reach him and also reach for that sentence hanging over his head to come down upon him. The suspension of sentences further demonstrates the respect the Courts accord to individuals. The Court, in suspending the sentence gives that individual wrong doer his liberty to freely for the second time

round to choose to go to prison by deliberately offending against the law well knowing that there is prison sentence waiting to fall upon him. Rex v Fitswana 1974 (1) SA page 479.

The appellant was committed to prison after sentence on 7/10/94. His application for bail pending appeal was heard and granted on 12/10/94. He had therefore served part of that sentence. He has been sufficiently punished. This Court therefore orders that the remainder of that sentence be suspended for a period of 3 (three) years on condition that the appellant does not commit any offence involving assault during that period of suspension.



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K.J. GUNI

JUDGE

For the Appellant: Mr. Teele

For the Respondent: Ms. Nku