

CRI/A/5/95IN THE HIGH COURT OF LESOTHO

In the matter between:

PUBLIC PROSECUTOR

APPELLANT

AND

MUSO TSATSI
SELEMO TS'OSANE
THABO MAKUKA
TEBOHO TSATSANE
MPITI MOLIBETSANE
MOKOENA SEBAKA

1ST RESPONDENT
2ND RESPONDENT
3RD RESPONDENT
4TH RESPONDENT
5TH RESPONDENT
6TH RESPONDENT

J U D G M E N T

Delivered by the Honourable Chief Justice Mr Justice
J.L. Kheola on the 6th day of November, 1995

This is an appeal by the Crown against the sentence imposed by the Subordinate Court for the district of Butha Buthe. The charge sheet alleges that upon or about the 4th day of December, 1994 and at or near Tsime in the district of Butha Buthe the said accused did unlawfully and intentionally and with intent to injure 'Mateboho Monnanyane in her property, set on fire and thereby damage a certain house, being the immovable property of the said Mateboho.

All the appellants pleaded guilty to the charge. In terms of section 240 (1) (b) of the Criminal Procedure and Evidence Act

1981 the Public Prosecutor stated the facts disclosed by the evidence in his possession. The appellants admitted the facts. They were convicted and eventually sentenced to "a caution and discharge."

The facts of the case were stated as follows:

"On 4-12-94 at Tsime in Butha Buthe at about 10.00p.m. these accused were from a certain place driving back home the cattle that had been stolen. Villagers were very glad to have the animals back to their owners. The song was sung and people going up and down in jubilation. Then a gun sounded from the direction of the complainant's house. All these five (5) accused rushed there. The people plus others are united to fight stock theft in their area.

On arrival they surrounded complainant's house and no one had been injured. They went there mainly because any time animals had been stolen prior to this occasion the suspicion had been that it was due to strangers who had been accommodated at 'Mateboho's house. They did ask complainant to open the house since gun had sounded from its direction. 'Mateboho who had not joined

happy people that stolen animals had been recovered refused to open the door. Then the house was set on fire and everything inside was damaged. All the occupants of the house were safe since they were led to escape. The incident was then reported to Joel's Drift Police who apprehended these accused who admitted to have burnt the said house. They were all cautioned and charged".

The Crown is now appealing to this Court on sentence only on the ground that the sentence of a caution and discharge is shockingly too lenient when it is taken into account that the accused had no right to punish the complainant for the crime she did not commit.

I wish to quote the words of Chief Justice Innes in the case of **Rex v. Mapumulo and others**, 1920 A.D. 56 at p.57 where the learned Chief Justice said.

"We have therefore the authority to amend sentences passed by the Native High Court; but as pointed out in **Rex v. Mdhlolongwe** (1916 A.D., p.267), it is a power which we should be very cautious in exercising. The infliction of punishment is preeminently a matter of the discretion of the trial Court.

It can better appreciate the atmosphere of the case and can better estimate the circumstances of the locality and the need for a heavy or light sentence than an appellate tribunal. And we should be slow to interfere with its discretion."

Unfortunately in the present case the court *a quo* did not give any reasons for sentence. However the mitigating factors are clear from the summary of the facts stated by the Public Prosecutor and from the plea in mitigation by the appellants. One of the factors is that the complainant and her relatives had been harbouring stock thieves who stole the animals belonging to complainant's co-villagers.

On the day the house of the complainant was set on fire the appellants and other villagers had recovered some of their stock which had been stolen. They were driving the animals into the village and singing in jubilation. All of a sudden there were three gun reports directed to them from the direction of the house of the complainant. The appellants lost their self control and surrounded the house of the complainant. They ordered her to open the door. She refused to do so because it was obvious that the mob would hurt her. The house was set on fire but no stock thieves were found in the house.

The mitigating circumstances mentioned above have some substance in them. I do not mean that appellants were entitled

to take the law into their own hands. In any case the complainant or her husband still have a civil claim for the damages she or he suffered at the hands of the appellants.

Under the circumstances of this case I feel very hesitant to interfere with the sentence imposed by the court *a quo*. The sentence was not so grossly lenient that I can interfere with it without difficulty.

In the result the appeal is dismissed.


J.L. KHEOLA
CHIEF JUSTICE

6th November, 1995.

For Crown - Miss Nku
For Appellants - Mr. Mohau