

IN THE HIGH COURT OF LESOTHO

In the Appeal of:

RATSOSANE RAMOSENSA

Appellant

v

R E X

Respondent

J U D G M E N T

Delivered by the Hon. Mr. Justice M.L. Lehohla on the  
3rd day of February, 1995

The appellant has appealed against both conviction and sentence. He had been charged in the court below under Section 3(1) of the Deserted Wives and Children Proclamation 60\59 which relates to the fact that while able to do so he was failing to supply maintenance to both his wife and child. It has been contented on behalf of the appellant that in fact the Crown was enjoined to prove the existence of marriage in a case which is brought under this section and that the Crown has failed to prove the existence of marriage.

The Crown has conceded that failure. Therefore this Court is entitled to make pronouncement that the learned Magistrate was in error or acted irregularly in maintaining that there was marriage

here while such hadn't been proved. However this will only dispose of the case relating to the complainant. So the appellant is not obliged to maintain and support the complainant. But it is a different story insofar as the question of the child is in issue. It has been conceded on behalf of the appellant that notwithstanding his denials according to the record that he is the natural father of this child that in fact he is such. Therefore he is obliged to maintain this child. But now one further point lingers, and doesn't seem to have been taken into account in making an order of maintenance by the court below against the appellant.

In the circumstances while the conviction stands insofar as relates to child, the question of rate of maintenance is a matter that has to be brought into surface in evidence.

In the circumstances, this Court is enjoined to make an order remitting this matter to the court below to be dealt with by a different Magistrate (but of the same area) to make findings to establish whether or not the appellant is working and what his earnings are for purposes of making a suitable and appropriate order for maintenance of the child.

J/ U D G E  
3rd February, 1995

For Appellant : Mr. Teele  
For Respondent: Mr. Ramafole