

IN THE HIGH COURT OF LESOTHO

In the Appeal of :

MOENA MOTOLO

Appellant

vs

R E X

Respondent

J U D G M E N T

Delivered by the Hon. Mr. Justice M.L. Lehohla on the
30th day of March, 1995

The facts in this appeal fall within a very narrow compass. I may state here that the accused was not represented in the court below. He has not been represented in this court either. However, he had indicated that he would like to have services of an advocate Mr. Mofolo. The matter was postponed to 8th February, 1995 for this purpose. On that day it was further postponed to 1st March 1995 in order to allow the appellant further opportunity to secure himself services of counsel. On all these occasions he failed to secure himself services of counsel of his preference; hence on this day which is today 30th March 1995 the appellant willingly decided that he was prepared to pursue or prosecute his appeal in person.

In the court below he was charged with and convicted of theft of one bag containing 50 kg of peas. This is a bag which belongs to or was in the possession of Food Management Unit(FMU)

where the appellant was working. Truly even before this court it appeared to me that the appellant was in dire need of counsel, because when asked what he wants to say concerning his appeal then, he confined himself to saying that he objected to being convicted of something that he had not committed; full stop. The court went out of its way to bring to his attention what various witnesses had said in the court below so as to afford him an opportunity to indicate to court where they falsely implicated him. This exercise though it was very very agonising somehow brought near to his understanding what is involved in this criminal proceeding. The upshot of the matter is that he also appreciated that the witnesses who gave evidence in the court below were not taxed on matters which he claims falsely implicated him. For instance PW2 Phillip Motsamai indicated to the court below that

"the accused then came to me and asked me to off-load that parcel of his at Mampoi's house. He said he would see Mampoi at lunch time. I found that Mampoi was not there but I left that bag of peas at Mampoi's home. I see the bag before court. It is similar to the one which accused loaded on to my car and which I left at Mampoi's. I did not know that that bag of peas was a stolen property".

This witness indicated that the parcel that was off-loaded at Mampoi's was the accused's parcel. But when the opportunity was given to the appellant to cross-examine this witness, he didn't indicate at all or put to this witness that "the parcel didn't belong to me". So by his conduct he was admitting the evidence of this witness for nohow could straight-forward evidence like that, which was very adverse to the appellant, have been ignored by him. There is also the evidence of the

appellant's own witness DW2 Motsie Motsie who stated that

"when I came back and when I was near the car I saw accused loading this bag of peas before court into the vehicle".

This evidence of the accused's own witness supports the evidence of PW2. So the court below didn't really have much to cudgel its brains about except to accept that evidence as true. DW3 Fihlang Palama who is also the appellant's own witness stated that (in answer to the question put to him by the appellant who was - I would love to believe - leading him) he put another bag of peas after the first one in that vehicle. He proceeded as follows :

"After we had put the other first bag in there"

(what is obvious or what can be read from all this evidence) is that while the first bag to be loaded onto the vehicle was legitimately loaded in the sense that it had a waybill, the subsequent bag didn't have any waybill and this is the bag which was loaded by the appellant and was directed to be off-loaded at Mampoi's place. Because this next bag did not have a corresponding waybill it is clear that it was dishonestly acquired. A waybill accounts for the number of goods or items intended to be conveyed. So if no waybill accounted for the appellant's bag he must have stolen it.

For these reasons I dismiss the appeal with regard to conviction and confirm the findings of the court below.

As to sentence Mr. Ramafole very fairly stated before court

that the sentence of four years' imprisonment appears to be too harsh and I agree with him. Therefore I propose to set aside the sentence of four years moreso because the accused is a first offender and I am aware that he hadn't used any of the peas, he never tasted them for all one can gather from the record because the exhibit was returned to the complainant. For the above reasons, therefore, I would sentence the appellant to one and half years' imprisonment.

J U D G E

30th March, 1995

For Appellant : In Person

For Respondent: Mr. Ramafole