C OF A (CRI) NO.1 OF 1995

IN THE LESOTHO COURT OF APPEAL

In the matter between :

'MAMAKOAE MOKOKOANE — APPELLANT

and

R E X — RESPONDENT

HELD AT MASERU

Coram :

STEYN J.A.
BROWDE J.A.
HEEVER A.J.A.

JUDGEMENT

STEYN J.A.

Appellant appeals both against her convictions and the sentences imposed on six counts of theft by false pretences by the High Court.

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The six charges in essence all have the same thrust. Count one - which will serve as a specimen charge - reads as follows:

" COUNT 1

> In that upon or about 5th day of July, 1991, and at or near Treasury Department in Maseru, in the district of Maseru, the said accused did unlawfully and with intent to defraud and to steal, misrepresent to the Treasury Department that a certain payment voucher number 017107 dated 3rd July, 1991 was a good and honest voucher for payment of stipends to certain internship students whose names were listed in an appendix attached to the said payment voucher, and did, by means of the said misrepresentation obtain from the Treasury M15,200.00 the property or in the lawful possession of the Lesotho Government, which money the accused did steal, thus committing the crime of THEFT BY FALSE PRETENCES."

Each of the five other counts relate to similar vouchers in the same amount issued during the months of August, September, October, November and December 1991.

Appellant pleaded not guilty on all counts, was convicted as charged and was sentenced to 6 years imprisonment on each count - the sentences to run concurrently i.e. an effective sentence of 6 years imprisonment. Although ~~the~~ an appeal was noted against the sentences, it was not persisted in and we are obliged to

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deal only with the appeal against the convictions.

The facts of the matter are comprehensively set out in the judgment of Molai J delivered on February 13 1995. Save for a qualification referred to below, I endorse not only his summary of the facts but also his reasoning, both of which are to be regarded as if incorporated by reference herein.

The qualification is the following. Mr. Pheko who appeared for the Appellant, argued - not without some merit - that one of the principal witnesses who testified in the Court below, being P.W.4 one Qhobela, was either an accomplice or a witness whose credibility and reliability were so suspect as to be approached with the degree of caution to which accomplice evidence is subject. With less merit, he suggested that we should adopt the same approach also to the evidence of P.W.3 one Moorosi.

Let me say at once that in so far as P.W.4 is concerned her evidence was certainly not convincing. Whilst it was never established that she was indeed actually involved in the theftuous dealing with Crown monies, there are certainly grounds upon which it could be

held that she could well have been aware of what was taking place, and that to her knowledge government documentation was being altered and abused for ulterior purposes. While the case for similar suspicion in respect of P.W.3 is less cogent, caution could well dictate that her evidence should be approached with great care.

It does not appear from the carefully reasoned judgment of Molai J. that he approached the evidence in this manner. We have therefore considered the evidence afresh and in the context urged upon us by Counsel for the Appellant. However, even if one were to approach the evidence of these two witnesses on the basis that they may have either been involved in or aware of a fraudulent scheme to steal government funds, the case against Appellant remains overwhelming.

In the first place one has to have regard to the gross inherent improbability of her version. Appellant was the senior official in the department, charged with the obligation of ensuring the integrity of the management of the accounts. P.Ws 3 and 4 were her juniors and accountable to her. She was qualified and had considerable experience in the accounting field. She was the person who

participated in the preparation of documents which enabled funds to be generated which "disappeared." She presented and encashed the cheques, and admits to receiving the cash. Her only explanation for her conduct is that she handed over, on a monthly basis, M15,200 in cash to her junior who placed it in a cabinet. She never enquired what happened to these funds after they were placed in the cabinet; nor does she know what happened to them.

It must however also be borne in mind that Appellant's version is not only in conflict with the testimony of P.W.3 and P.W.4. Both P.W.2 and P.W.7 gave critically important evidence concerning her involvement, the significance of which she seeks to counter by way of bare denials.

Thus in the case of P.W.2 she denies that when he questioned her in relation to the unusual procedure that was being followed, she furnished him with an explanation he testified she gave; an explanation which - it was conceded - was palpably false. Moreover, this witness averred that the documentation in the form in which it was ultimately presented, had been altered to increase the number of students involved from 19 to 190 and the amount from M1,520 to M15,200. Also the initialling brought about

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to legitimise the latter alteration, was not his. This is also denied by Appellant. Again if P.W.2 is to be believed, Appellant must have been aware of the fraudulent amendments and therefore a party to the implementation of the scheme to secure the funds in a theftuous manner. In so far as P.W.7 is concerned, she knew according to his testimony, that the presigned forms, authorised in blank, had been provided only for the purposes of the purchase of perishable goods in an emergency. However these forms were used in order to generate M15,200 a month, long after the signatory had departed from the post in terms of which it would have been proper for him to authorise payments for the purchase of perishables.

Finally, the version deposed to by Appellant necessitates a quantum leap as regards credibility into the fanciful - indeed into the absurd. I say this because it is common cause that each month M15,200 of government funds were stolen pursuant to an elaborate, carefully structured plan to defraud. Extensive documentation had to be prepared and presented via official channels, using presigned forms for a fraudulent purpose. False cheques were prepared, presented and cashed and the funds misappropriated. In all this activity, Appellant, the

senior accounting officer, is the prime mover and the person who ultimately encashes the cheques. She would have the Court believe that she did so innocently and without knowledge that every month a fraud was being committed through the documentation prepared and submitted by her as the person in charge without her ever being aware that she was doing anything dishonest. This is a prepostorous proposition which was rightly rejected by the Court *a quo* and is also rejected by us, after a reconsideration of the evidence based on the cautionary approach outlined above.

For these reasons the appeal fails. The convictions and sentences are confirmed.

Delivered at Maseru on this 19th day of January, 1996

J. H. STEYN
JUDGE OF APPEAL

I agree

J. BROWDE
JUDGE OF APPEAL

I agree

V. D. HEEVER
JUDGE OF APPEAL