

IN THE HIGH COURT OF LESOTHO

In matter between:

R E X

and

LERATO MAHANYE

1ST ACCUSED

MAMOHLOMI MONYANE

2ND ACCUSED

KOENA MOHALE

3RD ACCUSED

MACHAKA MOHAPI

4TH ACCUSED

J U D G E M E N T

Delivered by the Honourable Chief Justice, Mr Justice
J.L. Kheola on the 4th day of May, 1998

The accused are charged with twenty-one counts of theft. The charges read as follows:

COUNT 1

That:

In that upon about the 19th day of April, 1984 and at or near Traffic and Transport Department offices at Maseru, in the district of Maseru, the said accused did one or the other or all of them, unlawfully and intentionally steal M1, 612.40 (one

Thousand, six hundred and twelve Maloti and Forty Cents the property of Lesotho Government, then in their lawful possession.

COUNT 2

THAT:

In that upon or about the 15th day of May, 1984 and at or near Traffic and Transport Department offices at Maseru, in the district of Maseru, the said accused did one or the other or all of them, unlawfully and intentionally steal M798.00 (Seven Hundred and Ninety Eight Maloti) the property of Lesotho Government, then in their lawful possession.

COUNT 3

THAT:

In that upon or about the 22nd day of May, 1984 and at or near Traffic and Transport Department offices at Maseru, in the district of Maseru, the said accused did one or the other or all of them, unlawfully and intentionally steal M1 130.00 (One Thousand, one hundred and thirty Maloti) the property of Lesotho Government, then in their lawful possession.

COUNT 4

THAT:

In that upon or about the 28th day of May, 1984 and at or near Traffic and Transport Department offices at Maseru, in the district of Maseru, the said accused did one or the other or all of them, unlawfully and intentionally steal M1,316.80 (One Thousand three hundred and Sixteen Maloti and Eighty Lisente) the property of Lesotho Government, then in their lawful

possession.

COUNT 5

THAT:

In that upon or about the 29th day of May, 1984 and at or near Traffic and Transport Department offices at Maseru, in the district of Maseru, the said accused did one or the other or all of them, unlawfully and intentionally steal M2,769.60 (Two Thousand Seven Hundred and Sixty Nine Maloti and Sixty Lisente) the property of Lesotho Government, then in their lawful possession.

COUNT 6

THAT:

In that upon or about the 30th day of May, 1984 and at or near Traffic and Transport Department offices at Maseru, in the district of Maseru, the said accused did one or the other or all of them, unlawfully and intentionally steal M1,141.60 (One Thousand One Hundred and Forty One Maloti and Sixty lawful possession.

COUNT 7

THAT:

In that upon or about the 1st day of June, 1984 and at or near Traffic and Transport Department offices at Maseru, in the district of Maseru, the said accused did one or the other or all of them, unlawfully and intentionally steal M2,437.20 (Two Thousand Four Hundred and Thirty Seven Maloti and Twenty Lisente) the property of Lesotho Government, then in their lawful possession.

COUNT 8

THAT:

In that upon or about the 25th day of July, 1984 and at or near Traffic and Transport Department offices at Maseru, in the district of Maseru, the said accused did one or the other or all of them, unlawfully and intentionally steal M934.00 (Nine Hundred and Thirty Four Maloti) the property of Lesotho Government, then in their lawful possession.

COUNT 9

THAT:

In that upon or about the 7th day of August, 1984 and at or near Traffic and Transport Department offices at Maseru, in the district of Maseru, the said accused did one or the other or all of them, unlawfully and intentionally steal M1,115.80 (One Thousand One Hundred and Fifteen Maloti and Eighty Lisente) the property of Lesotho Government, then in their lawful possession.

COUNT 10

THAT:

In that upon or about the 13th day of September, 1984 and at or near Traffic and Transport Department offices at Maseru, in the district of Maseru, the said accused did one or the other or all of them, unlawfully and intentionally steal M1,142.70 (One Thousand One Hundred and Forty Two Maloti and Seventy Lisente) the property of Lesotho Government, then in their Law possession.

COUNT 11

THAT:

In that upon or about the 14th day of September, 1984 and at or near Traffic and Transport Department offices at Maseru, in the district of Maseru, the said accused did one or the other or all of them, unlawfully and intentionally steal M828.50 (Eight Hundred and Twenty Eight Maloti and Fifty Lisente) the property of Lesotho Government, then in their lawful possession.

COUNT 12

THAT:

In that upon or about the 18th day of September, 1984 and at or near Traffic and Transport Department offices at Maseru, in the district of Maseru, the said accused did one or the other or all of them, unlawfully and intentionally steal M968.00 (Nine Hundred and Sixty Eight Maloti) the property of Lesotho Government, then in their lawful possession.

COUNT 13

THAT:

In that upon or about the 27th September, 1984 and at or near Traffic and Transport Department offices at Maseru, in the district of Maseru, the said accused did one or the other or all of them, unlawfully and intentionally steal M2,442.50 (Two Thousand Four Hundred and Forty Two Maloti and Fifty Lisente) the property of Lesotho Government, then in their lawful possession.

COUNT 14

THAT:

In that upon or about the 6th November, 1984 and at or near Traffic and Transport Department offices at Maseru, in the district of Maseru, the said accused did one or the other or all of them, unlawfully and intentionally steal M3,141.00 (Three Thousand One Hundred and Forty One Maloti) the property of Lesotho Government, then in their lawful possession.

COUNT 15

THAT:

In that upon or about the 7th day of November, 1984 and at or near Traffic and Transport Department offices at Maseru, in the district of Maseru, the said accused did one or the other or all of them, unlawfully and intentionally steal M4,570.50 (Four Thousand Five Hundred and Seventy Maloti and Fifty Lisente) the property of Lesotho Government, then in their lawful possession.

COUNT 16

THAT:

In that upon or about the 13th day of November, 1984 and at or near Traffic and Transport Department offices at Maseru, in the district of Maseru, the said accused did one or the other or all of them, unlawfully and intentionally steal M3,664.00 (Three Thousand Six Hundred and Sixty Four Maloti) the property of Lesotho Government, then in their lawful possession.

COUNT 17

THAT:

In that upon or about the 20th day of November, 1984 and at or near Traffic and Transport Department offices at Maseru, in the district of Maseru, the said accused did one or the other or all of them, unlawfully and intentionally steal M3,396.00 (Three Thousand Three Hundred and Ninety Six Maloti) the property of Lesotho Government, then in their lawful possession.

COUNT 18

THAT:

In that upon or about the 21st day of November, 1984 and at or near Traffic and Transport Department offices at Maseru, in the district of Maseru, the said accused did one or the other or all of them, unlawfully and intentionally steal M3,522.50 (Three Thousand Five Hundred and Twenty Two Maloti and Fifty Lisente) the property of Lesotho Government, then in their lawful possession.

COUNT 19

THAT:

In that upon or about the 25th day of December, 1984 and at or near Traffic and Transport Department offices at Maseru, in the district of Maseru, the said accused did one or the other or all of them, unlawfully and intentionally steal M7, 667.90 (Seven Thousand Six Hundred and Sixty Seven Maloti and Ninety Lisente) the property of Lesotho Government, then in their lawful possession.

COUNT 20

THAT:

In that upon or about the 25th day of September, 1985 and at or near Traffic and Transport Department offices at Maseru, in the district of Maseru, the said accused did one or the other or all of them, unlawfully and intentionally steal M9,206.00 (Nine Thousand Two Hundred and Six Maloti) the property of Lesotho Government, then in their lawful possession.

COUNT 21

THAT:

In that upon or about the 27th February, 1985 and at or near Traffic and Transport Department offices at Maseru, in the district of Maseru, the said accused did one or the other or all of them, unlawfully and intentionally steal M3,869.00 (Three Thousand Eight Hundred and Six Nine Maloti) the property of Lesotho Government, then in their lawful possession.

It is common cause that A1 and A2 worked at the Maseru offices of Traffic and Transport Department. A1 was the supervisor in that office. A2 was one of the revenue collectors. A3 and A4 were checkers at the Treasury. When the charges were read to them they all pleaded not guilty.

The Crown was left with the task of proving its case beyond a reasonable doubt. In order to discharge the onus the Crown called eleven witnesses. Before dealing with the evidence of some of the witnesses it will be convenient to set out

the procedure when money is received from members of the public.

The revenue collectors are provided with receipt books for various services such as payment of motor vehicle registration certificate, licences and temporary/special permits. When a revenue collector receives money from a member of the public he or she issues a receipt for that particular service. The original copy of the receipt (usually white copy) is given to the person paying the money. At the end of the day, i.e. at about 3.00 p.m. every revenue collector balances his or her books. The money she has collected must tally with her receipt books. She takes the money and her receipt books to A1 who checks the money against the receipts and satisfies herself that they tally. She (A1) takes the money and keeps it safely. The books are returned to the revenue collector. It is the duty of the supervisor (A1) to take the money and deposit it into the Lesotho Government account at Standard Bank on the following day.

After a bank deposit slip has been issued A1 and her revenue collectors must take the receipt books and the bank deposit slip to the Treasury for checking. However, before the documents are taken to the Treasury, certain other documents have to be prepared by the revenue collectors for the presentation of their receipt books and the bank deposit slip.

One of such documents is the Revenue Collectors' Cash Book (A.G.162) which provides for the Collector's Name, Station, Date, Receipt Serial Numbers, Number of receipts, Amount collected and Coinage Allocation. At the bottom it is signed by the Revenue Collector and by the Checking Officer at the Treasury. Both officers stamp it with their date stamps.

Another document is the Paying-in-Voucher for revenue and other receipts. It is addressed to the Accountant-General and has to be signed by the Revenue Collector who has prepared it. It has a space for the Departmental Date Stamp. Full particulars of credit and serial numbers of receipts issued must be summarised on this form. The duplicate copies of receipts issued will be attached to this form together with a copy of the Revenue Collector's Cash Book.

At the Treasury the checker checks all the receipts issued and places her date stamp on the back of the last receipt issued where the total amount of money received is shown as reflected by all the receipts issued. After checking the books and having satisfied herself that the receipts tally with the money collected, she then issues an acknowledgment receipt which shows that amount of money she received from that particular revenue collector whose books were checked. A copy of that receipt is given to the revenue collector concerned.

To complete the whole transaction an entry is made in the Register kept at the Treasury. The Register shows all monies paid to the Treasury by all Ministries and Departments.

Although A1 was not expected to issue receipts, when the need arose she assisted the revenue collectors to issue receipts to members of the public. She, however, never prepared or completed a revenue collectors' cash book or a paying-in-voucher for revenue or other receipts. Those last mentioned documents were the responsibility of the revenue collectors.

The above short summary of the procedure at the Traffic and Transport Department is gathered from the evidence of the following Crown witnesses; P.W.2 Malefetsane Morolong, P.W. 4 Mantholi Lesaoana, P.W.5 Matisetso Lenoesa, P.W.6 Ngoajane Mohale and P.W.9 Lehlohonolo Swane.

P.W. 4, 5 and 6 were revenue collectors. Their evidence as regards the procedure in the collection of revenue is the same. They testified that sometimes when A1 was absent A2 did her job of checking the books of the revenue collectors at the end of the day and taking the money collected for safe keeping. They were, however, not sure of the dates on which A2 so acted for A1. There is

no indication that on the relevant dates covering the twenty-one charges A2 acted for A1. One of the witnesses was under the impression that A1 or A2 signed the revenue collectors' cash book when they checked the books at the end of each day. That is not correct because all the revenue collectors' cash books before Court have not been signed by A1 or A2.

To complete their evidence on proper procedure the Crown handed in certain documents connected with Count 20 which were marked Exhibit "13". Count 20 involved two amounts. One amount of M3 554.90 was properly accounted for. It consists of two amounts. The first amount of M2 624.20 is reflected in the paying-in-voucher and the revenue collector's cash book both dated the 25th September, 1985, the Treasury voucher No. is 8018834. The second amount of M930.70 is reflected in the paying-in-voucher and the revenue collector's cash book both dated the 25th September, 1985. The Treasury voucher No. is 801835. For the total of M3 554-90 there are two bank deposit slips-one for 10 cents and the other for M3 554.80. Both were signed by A1 and certified as correct by the Revenue Inspector. There is an acknowledgment receipt No.40490 dated the 30th September, 1985.

The above amount was entered in the Treasury Register (Exhibit "AA") at

page 28.

P.W. 9 Lehlohonolo Swane is the star witness for the Crown because he audited the account books which were used by the accused in this trial. He is a civil servant in the Ministry of Finance. In August, 1986 he was the Senior Auditor in the Department of Audit. Mr. S. Molapo was the Auditor-General. Mr. Zwane testified that he holds a B. Com. Degree and he attended many courses. He specialised in accounting. He was given the assignment to audit the account book of the Department of Traffic and Transport in August, 1986. The books covered the period from 1984 to 1986. His evidence is to the effect that when he came to the offices of the Department of Traffic and Transport he checked or audited many receipt books used by the accused and revenue collectors' cash books which were prepared by the revenue collectors. When he audited the books the accused were no longer present because they had been unceremoniously dismissed.

In Count 1 he checked/audited the following receipts (See Exhibit "A":)

424214 - 424249	amount collected	M824-00
424906 - 424918	“ ”	216-00
425339 - 425375	“ ”	386-20
12626 - 12642	“ ”	119-00
2276 - 2280	“ ”	<u>67-00</u>
	Total	M1612 -00

The revenue collectors' cash book and the receipt books are exhibit "29". It was prepared by A2. It has the date stamps of the Department of Traffic and the Treasury but no signatures. There is no paying-in voucher which ought to have been prepared to accompany Ex. "29" to the Treasury. There is no bank deposit slip and the amount does not appear in the register (Exh. "AA"). Mr. Swane's conclusion was that the money was never deposited into the bank.

In Count 2 he audited the following receipts (See Exhibit "B"):

2363	2369	amount	collected	M255-00
4433	4437	"	"	75-00
29059	29061	"	"	95-00
6401	6407	"	"	276-00
426080		"	"	2-00
424690	424690	"	"	<u>95-00</u>
			Total	798-00

The revenue collectors' cash book was prepared by a certain F.M. Lepphoto. It has no date stamp of Traffic Department and no signature. It has the Treasury stamp but no signature and no bank deposit slip. Mr. Swane's conclusion is that the money was never deposited into the bank.

In Count 3 he audited the following receipts (See Exhibit "C"):

2346	2350	amount	collected	M165-00
2401	2402	"	"	70-00
4488	4493	"	"	90-00
29067	29068	"	"	295-00
6437	6443	"	"	195-00
424725	424730	"	"	<u>90-00</u>
			Total	905-00

The revenue collectors' cash book was prepared by A2. It has the date stamp of the Department of Traffic but no stamp or signature of the Treasury. It has no bank deposit slip. Mr. Swane's conclusion is that the money was never deposited into the bank.

In Count 4 he checked the following receipt books: (See Ex "D"):

428329	428332	amount	collected	M 60-00
2259	2261	"	"	54-60
425739	425750	"	"	614-00
428080	428083	"	"	51-00
428889	428915	"	"	294-00
13139	13150	"	"	114-60
13151	13160	"	"	<u>124-60</u>
		Total		1316-00

In Count 5 he audited the following receipt books (See exhibit "E"):

29008	29010	amount	collected	M465-00
2454	2463	"	"	334-00
6557	6572	"	"	225-00
6569	6579	"	"	240-00
426090	426911	"	"	3-20
427001	427009	"	"	<u>135-00</u>
		Total		1402-20

The revenue collectors' cash book (Ex E) was prepared by A2. It has the date stamp of the Department of Transport but no signature of A2. There is no signature of the checking officer nor the Treasury date stamp. There is no bank deposit slip. Mr. Swane's conclusion is that the money was never deposited into the bank.

There is the second revenue collectors' cash book which appears to have been prepared by A1. Receipts are as follows:

426501	426510	amount	collected	M548-00
428333	428642	“	”	158-00
428084	428089	“	”	108-00
428916	428952	“	”	318-80
13161	13175	“	”	<u>236-60</u>
			Total	1367-40

This revenue collectors' cash book has all the signatures and the Treasury date stamp and Revenue Inspectors' Certificate. However, there is no bank deposit slip.

In Count 6 he audited the following receipt books: (See Ex "F")

426511	426517	amount	collected	M324-00
428343	428351	"	"	148-00
428953	428993	"	"	416-20
2263	2264	"	"	36-00
13176	13197	"	"	<u>217-40</u>
		Total		1141-60

This revenue collectors' cash book does not bear collector's name nor does it bear her signature. There is a date stamp of the Department of Transport. No checking officer's signature and Treasury stamp. There is no bank deposit slip.

In Count 7 he audited the following receipt books (See Ex "G"):

2467	2470	amount	collected	M161-80
29014	29015	"	"	211-00
6576	6581	"	"	90-00
6583	-	"	"	30-00
427042	427056	"	"	<u>225-00</u>
			Total	717-00

The revenue collectors' cash book does not show the name of the revenue collector. It is not signed by the collector nor by the checking officer. It has the date stamp of the Department of Traffic and Transport. There is no bank deposit slip.

It seems that on the same day, 1st June 1984 another revenue collectors' cash book was compiled by one E.M. Lesaoana. It comprises the following receipt books:

428090	428144	amount	collected	M 519-80
428994	429000	“	”	57-00
13198	13200	“	”	42-00
13201	1246	“	”	529-80
2265	2268	“	”	15-00
428352	428357	“	”	91-00
426518	426539	“	”	392-60
426540	426541	“	”	15-00
428145	428150	“	”	<u>58-00</u>
			Total	1720-20

There is no bank deposit slip for this amount as well.

In Count 8 he audited the following receipt books (See Ex. "H"):

4776	4780	amount	collected	M	60-00
4775	3100	"	"		12-00
3096	3100	"	"		110-00
7125	7132	"	"		225-00
3701	3703	"	"		95-00
29193	29194	"	"		123-00
426173	426175	"	"		24-00
433156	433169	"	"		<u>285-00</u>
			Total		934-00

The revenue collectors' cash book was prepared by one A. Mohapi. There are no signatures but both date stamps are there. What is missing is the bank deposit slip.

In Count 9 he audited the following receipt books (See Ex. "I"):

7179	7189	amount	collected	M 401-00
4851	-	"	"	12-00
3659	3671	"	"	429-00
29158	29160	"	"	45-00
4800	-	"	"	12-00
426200	426204	"	"	6-80
433231	433244	"	"	<u>210-00</u>
			Total	1115.50

This revenue collectors' cash book does not show the name of a person who prepared it nor her signature but only the date stamp of the department of Traffic. The signature of the checking officer is there and she signed as the Revenue Inspector. There is no bank deposit slip.

In Count 10 he audited the following receipt books (See Exh. "J"):

4133	4150	amount	collected	M 545-00
5630	6534	"	"	60-00
29149	-	"	"	98-00
7359	7367	"	"	297-00
532318	532322	"	"	45-20
431424	431430	"	"	<u>97-50</u>
			Total	1142-70

The revenue collectors' cash book was prepared by a certain N. Mohapi who did not sign it but date stamped it. It has the Treasury stamp and signature of the checking officer who signed as Revenue Inspector. There is no bank deposit slip.

In Count 11 he audited the following receipt books (See Ex. "K"):

5635	5637	amount	collected	M	36-00
7368	7372	"	"		150-00
3751	3755	"	"		165-00
532323	532324	"	"		395-00
431431	431435	"	"		<u>82-50</u>
			Total		828-50

The revenue collectors' cash book was prepared by a certain N. Mohapi; she did not sign it but stamped it with her official stamp. At the Treasury it appears to have been signed and date stamped by a checking officer who certified it as correct. There is no bank deposit slip.

In Count 12 he audited the following receipt books (See Ex "L"):

3776	3782	amount	collected	M225-00
3768	3775	"	"	242-00
29150	-	"	"	15-00
5649	5650	"	"	24-00
30683	-	"	"	15-00
7377	7387	"	"	245-00
532327	532328	"	"	22-00
431441	431450	"	"	<u>180-00</u>
			Total	968-00

The revenue collectors' cash book was prepared by one N. Mohapi. She did not sign it but stamped it with her official date stamp. At the Treasury it was signed by a checking officer who certified it as correct. No bank deposit slip.

In Count 13 he audited the following receipt books (See Ex. "M"):

4231	4250	amount	collected	M 870-00
4251	5270	"	"	834-00
7426	7438	"	"	464-00
5901	5902	"	"	24-00
532340	532342	"	"	55-00
431490	431500	"	"	<u>195-00</u>
			Total	2442-00

The revenue collector's cash book was prepared by A2. She date stamped it with her official stamp but did not sign it. It has the certificate and the Treasury date stamp. A checking officer signed it. There is no bank deposit slip.

In Count 14 he audited the following receipt books (See Ex. "N"):

4651	4669	amount	collected	M603-00
4643	4650	"	"	755-00
7708	7723	"	"	400-00
8671	8676	"	"	48-00
532409	532412	"	"	240-00
538235	538250	"	"	247-50
537001	537008	"	"	<u>667-50</u>
			Total	3141-00

The revenue collectors' cash book was prepared by A2. It has her official date stamp but no signature. It has both Treasury date stamp and the certificate and a signature. It has no bank deposit slip.

In Count 15 he audited the following receipt books (Ex. "O"):

7724	7730	amount	collected	M 227-00
8675	-	"	"	12-00
4676	4700	"	"	2130-00
4670	4675	"	"	185-00
4701	4718	"	"	1779-00
532413	-	"	"	20-00
537009	537022	"	"	<u>217-50</u>
			Total	4570-50

The revenue collectors' cash book was prepared by a certain N. Mohapi and signed by her. It has her official date stamp. It also has the Treasury date stamp and certificate as well as a signature of the checking officer. It has no bank deposit slip.

In Count 16 he audited the following receipt books (See Exh. "P"):

5001	5017	amount	collected	M1370-00
4784	4800	“	”	1584-00
4765	4775	“	”	335-00
8732	8735	“	”	48-00
7865	7869	“	”	97-00
537781	537790	“	”	<u>230-00</u>
			Total	3664-00

The revenue collectors' cash book was prepared by A2. She did not sign it but stamped it with her official date stamp. It has the Treasury date stamp and the certificate and signature of the checking officer. It has no bank deposit slip.

In Count 17 he audited the following receipt books (Exh. "Q"):

307224		amount	collected	M	15-00
5173	5175	"	"		120-00
5186	5200	"	"		604-00
4451	-	"	"		12-00
5201	5224	"	"		2054-00
7873	5885	"	"		351-00
537828	537842	"	"		<u>240-00</u>
			Total		3396-00

No bank deposit slip.

In Count 18 he audited the following receipt books (See Exh. "R"):

5276	5284	amount	collected	M	450-00
4452	4460	"	"		96-00
5225	-	"	"		35-00
5251	5275	"	"		1280-00
5226	5250	"	"		935-00
7886	7900	"	"		389-00
8001	8005	"	"		90-00
537843	537859	"	"		<u>247-00</u>
			Total		3522-00

The revenue collectors' cash book was prepared by A2. She stamped it with her official date stamp but did not sign it. It has the Treasury stamp and a signature of the checking officer. The certificate is also there. There is no bank deposit slip.

In Count 19 he audited the following receipt books (See Exh. "S"):

7226	7250	amount	collected	M933-00
1	2	"	"	200-00
8791	8794	"	"	48-00
7251	7275	"	"	889-00
7201	7225	"	"	1769-00
7176	7200	"	"	1046-00
7151	7175	"	"	786-00
8246	-	"	"	195-00
7144	7150	"	"	260-00
532439	532455	"	"	28-40
534946	534987	"	"	<u>622-50</u>
			Total	7667-90

The revenue collectors' cash book was compiled by one N. Mohapi who signed it and date stamped it with her official date stamp. At the Treasury it appears to have been stamped and signed by a checking officer. It was certified correct. There is no bank deposit slip.

In Count 20 he audited the following receipt books (See Exh. "T"):

16056	-	amount	collected	M	15-00
5604	5625	"	"		2035-00
11538	11543	"	"		250-00
8451	8457	"	"		84-00
582976	-	"	"		2-00
5626	5650	"	"		9206-00
34853	34866	"	"		<u>238-20</u>
			Total		11,830-20

The revenue collectors' cash book was prepared by A2. She stamped it with her official date stamp but did not sign it. It has both the Treasury date stamp and the certificate that it is correct. There is no bank deposit slip.

It will be recalled that in this count an amount of M2624-20 was properly accounted for and only an amount of M9206-00 per receipt Nos. 5626-5650 was not accounted for.

In Count 21 he audited the following receipt books (See Exh. "U"):

15334	15350	amount	collected	M	2443-00
15322	15325	"	"		1426-00
3984	3985	"	"		24-00
15351	15354	"	"		120-00
9622	9639	"	"		180-00
462852	462864	"	"		<u>309-00</u>
			Total		5132-00

The revenue collectors' cash book was compiled by one N. Mohapi who date stamped it and signed it. At the Treasury it was certified as correct and stamped properly. The checking officer signed it.

It was a somewhat strange transaction because another Mohapi whose signature differs from that of the first N. Mohapi compiled another revenue

collectors' cash book and used the last four receipt books which appear in the first revenue collectors' cash book. They are:

3984	3985	amount	collected	M	24-00
15351	15354	“	”		120-00
9622	9629	“	”		810-00
462852	4662864	“	”		<u>309-60</u>
			Total		1263-60

This amount of M1263-60 was properly deposited into the bank as evidenced by the paying-in voucher dated the 27th February, 1985 and the Treasury Voucher Nos. 803736 - 803737. It includes another amount of M742-00. Both amounts make a total of M2005-60. The bank deposit slip is dated the 1st March, 1985 and it is signed by Al and Mohapi and it appears at page 117 of the Register (Exhibit “Z”).

It is clear that the amount of M3869-00 which is covered by receipts Nos. 15334 - 15350 and 15322 - 15325 was never deposited into the bank account of the Lesotho Government.

The evidence of Mr Zwane is that all the amounts of money appearing in all the counts were stolen by the accused especially A1 who was the supervisor of all the accounts staff at the Department of Traffic and Transport. According to his audit of the books of account of that department it was clear that the amounts in question were never deposited into the revenue account of the Lesotho Government at the Standard Bank at its Maseru branch where the account was kept.

All the amounts in question do not appear in the Treasury registers (Exhibits "AA" and "Z"). All the amounts which were properly accounted for by depositing them in the relevant account are in the registers and have been given Treasury voucher Nos. These numbers are stamped on the paying-in voucher. A good example appears in Count 21 in which part of the revenue collected was deposited into the bank account. Two paying-in vouchers for revenue were prepared and taken to the Treasury where they were procedurally dealt with. In all the amounts which appear in the twenty-one counts no paying-in vouchers for revenue were found and it appears that they were never made by the revenue collectors.

It is common cause that at the end of each day all the revenue collectors gave their collections to A1. It was her duty to keep the money safely overnight and bank it on the following morning in readiness to go to the Treasury with her bank

deposit slip or slips. She would be accompanied by the revenue collectors who collected money on the previous day. Their books would be checked by checking officers.

It seems that some of the checking officers had common purpose with A1 to steal the money collected by the department of Traffic and Transport. What they did was to certify that the receipts and cash (in the form of bank deposit slips) have actually been checked and found correct. They would also stamp the revenue collectors' cash books with their official date stamps. The certificate was false because there was no cash nor any bank deposit slips. This is the reason why the Crown joined A3 and A4 in order to prove that they had common purpose with A1 and A2 to steal the money.

P.W.10 'Mamolefi Mathibeli worked at the Treasury as the Main Cashier until 1986 when she left and joined the Lesotho Highlands Water Development Project. As the main cashier A3 and A4 were under her supervision. They were both cashiers whose work was to check receipt books from Ministries and Departments. It was their duty to issue acknowledgment receipts if after checking the receipt books and bank deposit slips tallied. If there were no bank deposit slips the books could not be checked. Part of her evidence was that the signature of the

checking officer appearing on the revenue collectors' cash books in Counts 10, 11 and 12 looks like that of A4.

The defence did not deny that the signature in question seemed to be that of A4. If they denied that it was not and did not look like that of A4, the evidence of P.W.10 would have been discarded. However, it was not challenged and I have no alternative but to accept that the signature is that of A4. She worked as a cashier/checking officer at the relevant time.

P.W.11 'Malintsa Makhaola works at Nedbank which used to hold the Lesotho Government's revenue account. She was an Accountant. She was given a long list of amounts by the police and asked to find out if those amounts were ever deposited in the Lesotho Government's revenue account. After checking the bank's records it was found that the amounts were not deposited to the Lesotho Government's Revenue Account on any of the dates mentioned. Her written statement addressed to the police is Exhibit "CC". The lists are marked "A" and "B". All the amounts in the twenty-one counts are in the list marked "A".

List "C" shows that the amounts of M2005-60 and M3554-90 were paid into the bank. I have already dealt with these amounts earlier in this judgment.

The evidence of the Accountant from the bank proves beyond any reasonable doubt that the amounts involved in the twenty-one charges were never paid into the Lesotho Government Revenue Account held at Nedbank. It corroborates the evidence of Mr. Zwane.

Mr. Khauoe, attorney for A1, submitted that it is also significant to note that except one count, all other documents covering other counts are but photo copies though there is evidence that originals were kept by Treasury. There is no evidence as to where these originals had gone except that they were not found.

The submission is misconceived because in all the counts we have carbon copies of the revenue collectors' cash books. That is to say from Exhibit "A" to "U" inclusive we have carbon copies of the relevant cash books. As far as the receipt books are concerned there are carbon copies which are left in the book when the original is given to the payer. To say that there is no evidence as to where these originals have gone to except to say they were not found does not make sense. A search was apparently made for them and they could not be found. Obviously there was no evidence as to where they were.

He submitted that irrespective of the fact and evidence by the Crown that not

only one cash book was presented to the Treasury, banking was made up of total sum of all the cash books which collected monies, all these counts refer to only a single cash book, further other cash books are not before the Court and there is no explanation as to why they are not before Court.

For every cash book compiled by each revenue collector, a paying-in voucher is made for each one of them. It means that when A1 is given money at the end of the day she might have one lump sum of money which includes collections of more than one revenue collector. Each of the collectors must have her own paying-in voucher and a revenue collectors' cash book. For instance, on the 23rd September, 1985 there were two amounts from two separate paying-in vouchers and cash books. The amounts were M2624-20 and M930-70, they were added together and deposited as one lump of M3554-80 and 10cents. The difficulty I have with the above submission is that here we are dealing with transactions which were fraudulent right from the beginning. No paying-in vouchers were made and no deposits were made into the bank account of Lesotho Government. The Accountant of Nedbank testified that all the amounts which are the subject matter of the charges do not appear in the bank records.

Mr. Khauoe submitted that in order to prove that on examination of the

books of account there was deficiency, the Court must be satisfied that on a particular day in question so much money was collected, so much has been accounted for and that so much is a deficiency. That is exactly what happened regarding all the transactions in this case. For instance, on the 19th April, 1984 the amount in Count 1 was the only amount collected. On that day the Department of Traffic and Transport paid in no money to Treasury and bank. (See page 69 of Exhibit "Z"). The Treasury vouchers are numbers 800196 - 800199, which means that there were four amounts paid in and made a lump sum of M3939.30. The amount of M1712-40 was not included in that amount.

On the 15th May, 1984 the Department of Traffic and Transport paid in no money at the Treasury (See page 73 of Exhibit "Z").

On the 25th July, 1984 the Department of Traffic and Transport paid in no money at the Treasury (See page 83 of Exhibit "Z").

On the 26th October, 1984 the Traffic Department paid in eight amounts (See page 96 of Exhibit "Z").

The amounts which were not paid in at the Treasury in the form of bank

deposit slips are the deficiency. The money which was not accounted for was stolen.

It is common cause that sometimes A2 acted for A1 when the latter was absent from work. There is nothing to show that on the particular days relevant to the charges A1 was ever absent. It is also common cause that A1 often assisted the revenue collectors in the issuing of receipts. For that reason her signature appears in many of the receipts books, e.g. Count 1: receipts 424216, 424906; Count 2: 4437, 423694-5, 4437; Count 4: 425739-40, 425741; Count 9: 7179,7180,7181; Count 10: 5633, 5634; Count 12: 431447-50; Count 15: 4693-4700; Count 16: 4789-92; Count 17: 537843; Count 18: 5276; Count 19: 1-2.

On all those days relevant to the charges she was present at work and actually issued receipts.

At the close of the crown case an application was made for the discharge of all the accused. It was granted in respect of A3 who was found not guilty and discharged because there was no case for her to answer. The Court found that there was a case for A1, A2 and A4 to answer. They closed their case without giving any evidence and called no witnesses.

I have already indicated above that the procedure was that at the end of each day all the revenue collected was given to A1. It was her duty to keep the money and to bank it on the following day. She received the monies referred to in all the twenty-one charges but never banked it. I have come to the conclusion that she stole such monies.

A2 was a revenue collector. There is no evidence that she failed to give her collections to A1 at the end of each day. There is no evidence about the exact days on which she acted for A1 as a supervisor. The Crown has failed to prove her guilt beyond a reasonable doubt.

The evidence against A4 was very flimsy but was never challenged. The Crown case is that the signature in question looked like hers. It is also alleged that she and other checking officers at the Treasury had common purpose with A1 to steal public funds. They were aware that there were no bank deposit slips brought by A1 but they certified the books as correct and signed. A4 was a checking officer at the relevant time. I have come to the conclusion that her guilt has been proved beyond a reasonable doubt on Counts 10, 11 and 12.

P.W.4, 5 and 6 are either mistaken or lying outright when they say that they

saw that A1 had bank deposit slips when they went to Treasury for checking their books. There is no particular reason why they should remember that on the particular occasions covered by the charges A1 had the deposit slips. They went to the Treasury several times in a week and numerous times in a month. They are just trying to save their skins and that of A1 because they are aware that they ought to have been charged jointly with the present accused. It is inconceivable that people who were responsible for collecting public revenue were unaware that the Treasury staff issued no acknowledgment receipts in respect of the very money collected by them. They know very well that the money was not being properly accounted for. They ought to have been declared as accomplices because they did the same job as A2. I accordingly approached their evidence with caution. Be that as it may, their evidence related to the procedure in the collection of revenue which was proved by other witnesses.

Mr. Matabane, counsel for A4, submitted that the evidence of the Crown that the signature in Counts 10, 11 and 12 looked like that of A4 was inconclusive. I prefer to say it was rebuttable and that if not rebutted it became conclusive. The guilt of A4 is also proved by common purpose with A1. All the cashiers/checking officers at the Treasury had common purpose with A1 inasmuch as they certified as correct books which were not correct at all. The rebuttable identification of the

signature of A4 by the main cashier under whom she served, strengthened the case against A4. The evidence on common purpose - standing alone - was not strong enough to support a conviction. That is why A3 was acquitted as well as A2.

If the prosecution has proved suspicious circumstances which the accused, if innocent, could reasonably be expected to answer or explain, his failure to testify will strengthen any unfavourable inferences which can properly drawn from prosecution evidence. (**R. V. Dube** 1915 A.D. 557 at p. 563; **R v. Africa** 1938 A.D 556 at p.560). But this form of reasoning is permissible only when the prosecution is strong enough to call for an answer. It must be sufficient in itself to justify, in the absence of an explanation or answer, the inference of guilt (**State v. Masia** 1962 (2) S.A. 541 (A.D.) At p.547).

For the reasons stated above I found the Crown has proved its case against A1 beyond a reasonable doubt on all twenty-one charges/counts.

A2 is found not guilty on all twenty-one counts.

A4 is found guilty on charged on counts 10, 11 and 12.

SENTENCE:

In passing sentence I have taken into account that both accused are first offenders.

A1 is a widow who is caring and bringing up three minor children.

This case has been hanging over their heads for more than ten years and that during most of that time they were interdicted from work without pay.

I was referred to a number of cases including that of **Director of Prosecutions and another v. 'Masefabatho Lebona C. of A (CIV) No.34 of 95; Coetzee & others v. Attorney - General, Kwazulu/Natal and others. 1997 (8) BCLR 989 (D); Wild & Another v. Hoffert N.O. and others 1997 (7) BCLR 974 (N)**. In the present case I do not know who to blame between the Crown and the defence as to who is to blame for the inordinate delay. However, I shall take this factor into account when passing sentence.

The charges facing the accused are very serious when it is taken into consideration that the amount involved is M57,674-00. A1 was the supervisor and was in a position of trust. The same applies to A4 who facilitated the commission

of this offence.

Sentence: A1

- Count 1: One (1) year's imprisonment
- “ 2: Nine (9) months' imprisonment
- “ 3: One (1) year's imprisonment
- “ 4: One (1) year's imprisonment
- “ 5: One (1) year's imprisonment
- “ 6: One (1) year's imprisonment
- “ 7: One (1) year's imprisonment
- “ 8: Nine months' imprisonment
- “ 9: Nine months' imprisonment
- “ 10: Nine months' imprisonment
- “ 11: Nine months' imprisonment
- “ 12: Nine months' imprisonment
- “ 13: One (1) year's imprisonment
- “ 14: Two (2) years' imprisonment
- “ 15: Two (2) years' imprisonment
- “ 16: Two (2) years' imprisonment
- “ 17: Two (2) years' imprisonment

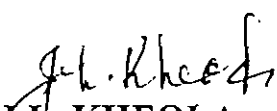
- “ 18 Two (2) years’ imprisonment
“ 19 Three (3) years’ imprisonment
“ 20 Four (4) years’ imprisonment
“ 21 Two (2) years’ imprisonment

All sentences to run concurrently.

Sentence A4:

- Count 10 Nine (9) months’ imprisonment
“ 11 Nine (9) months’ imprisonment
“ 12 Nine (9) months’ imprisonment

All sentences to run concurrently.


J.L. KHEOLA
CHIEF JUSTICE

11TH MAY, 1998

For Accused 1 - Mr Khauoe
For Accused 2 - Mr. Mafantiri
For Accused 3 - Mr. Matabane
For Accused 4 - Mr. Matabane