

IN THE HIGH COURT OF LESOTHO

In the matter between:-

MOTSEARE LETSELA

vs

REX

REASONS FOR JUDGMENT

Delivered by the Honourable Acting Mr Justice S.N. Peete
on the 11th May 1998

The appellant hereinafter referred to as the accused had originally appeared before the Leribe Subordinate Court charged with theft of M14,423 the property or in the lawful possession of Standard Bank Maputsoe, it being alleged that during the period 26th January 1994 to September 1997 the accused withdrew several monies from the Standard Bank Maputsoe. The accused pleaded guilty to the charge. The outline of facts by the Senior Public Prosecutor - Mr Lebeta - indicated that the accused had realized that he and one Sebota Motseare shared a common name - Motseare. This Sebota Motseare used to work in the Republic of South Africa at NAMPAK PENSION under the Old Mutual Insurance Company. Upon retirement he had to receive his retirement pension cheques through Standard bank, Maputsoe.

It was stated by the prosecutor that whereas Sebota Motseare's account number was 049014689831, the cheques were paid into the account of one Malomile Letsela whose account was 049015545291. Malomile Letsela was thereafter influenced by the accused to withdraw the said monies whose depositing into her account has mysteriously not been explained. It could have been a mistake or a fraud involving the bank employees. The accused is stated by the prosecutor to have told Malomile Letsela that such deposits were god-sent by their ancestors! Since no evidence was led, one can only surmise that Malomile was going to be called as an accomplice. The total monies thus illicitly withdrawn amounted to M14.423.00.

Subsequent inquiries mounted after the lawful recipient Sebota Motseare complained revealed the complicity of the accused and Malomile Letsela. They knew that they were not entitled to receive such monies from the Standard Bank Maputsoe. The accused admitted all these facts as outlined by the prosecutor and the Magistrate M. Moahloli found him guilty as charged (S.240 of the Criminal Procedure and Evidence Act of 1981). Prosecutor informed the Court that the accused had no previous convictions. The accused, who was unrepresented, mitigated on his own behalf. The learned Magistrate imposed a 6 years imprisonment sentence.

He has appealed to this court only against sentence. The learned Magistrate did not give reasons why he imposed six years imprisonment on the accused who had pleaded guilty thus showing remorse. He had no previous convictions. Whilst it is trite law that sentence is pre-eminently a matter of judicial discretion of the trial court, and the appellate court will only interfere where the discretion has not been judicially exercised for example where the sentence is excessive or too lenient or where the it is otherwise inappropriate (Matiea and Another vs Rex - 1979 (1) LLR 139 at 144 - 6; S vs Anderson 1963 (3) SA 494 at 495 R vs Rabie - 1975 (4) SA 855) the Court must always state its reasons for the sentence it imposes.. In the case of Mathabo Mojela vs Rex 1977 LLR 321 at 324 the late Mofokeng J. states as follows:-

“In this particular case, this court is totally in the dark as to how the court a quo arrived at the sentence it did because no reasons have been filed. This court has said before that it is of paramount importance that the accused person should

know the reasons for the imposition of his sentence. These reasons must not be stated after the accused has noted an appeal but when the sentence is actually being imposed.” (See also Rex vs Kalake 1977 LLR 224).

I am of the opinion that though the amount embezzled by the accused and his accomplice is quite substantial, a sentence of imprisonment would not suit the justice of the case; rather restitution of the stolen monies to Sebota Motseare would serve the interests of the case better. Imprisonment, bad as its effects are, would defeat restitutive measures. I therefore reduce the sentence of six years imprisonment to three years imprisonment which are wholly suspended for three years on condition that the accused is not convicted of an offence involving dishonesty during the period of suspension and in terms of Section 8 (1) (c) of the High Court, I send this case back to the learned Magistrate with the following instructions:-

“That in terms of the provisions of Section 324 (2) of the Criminal Procedure and Evidence Act of 1981, Sebota Motseare or his representative must be subpoenaed to appear before the trial Magistrate and to apply for the restitution of the stolen monies. I make this order because as it was decided by Huggard CJ in the old case of Rex vs Liau Mohapi Gadebe, 1926 - 53 HCTLR 111 where he stated that the Court has no power to order compensation (restitution) unless applied for by the injured party or to order imprisonment in the event of failure to pay compensation.”

The learned Magistrate is ordered to summon the accused and Sebota Motseare for the purpose of this aspect of restitution.



S.N. PEETE

ACTING JUDGE