

IN THE HIGH COURT OF LESOTHO

In the matter between:

R E X

and

**TEBOHO RAMMONENG
MABOLOKA MABOLOKA**

R U L I N G

**Delivered by the Honourable Mr. Justice T. Monapathi
on the 28th day of June 2000**

It should be remembered that my decision of the 12th December 1995 was the first stage, in the early history of the proceedings, when the trial proper was to begin. It was made in the context of explaining the disappearance of the documents that were with the Preparatory Examination (PE) record. It was to explain the reasons why it would be wise for the Court to advise itself that those disappeared documents should still be regarded as part of the record albeit in photostat copies form which are secondary evidence of those documents which were identified.

My ruling justified why I regarded those documents as part of the record in a way that their original documents were. It went as far as that. It did not go as far as suggesting that those documents would be automatically be admitted as evidence in this trial and as part of this proceedings without regard to the rules of production of documents. My understanding was that the introduction of that inquiry which was in the form of introducing the three first witnesses including the Chief Magistrate Mr Mapetla was to explain exactly the circumstances of the Court being now urged to deal with

photostat copies of documents that had been part of the PE record. It was a different stage.

We came to a stage now where we even had witnesses who are able to say that the identified cheques and payment vouchers were similar to the originals that were seen, identified and exhibited at the P.E. That they had known the original documents some of which they had drawn and authorised. Some of the witnesses had already testified so. The witnesses had been able to explain the manner in which they were able to identify the IDs as copies for the originals some of the witnesses had been brought to testify about the truth of the contents of the documents.

We even heard the evidence which I said I was convinced about its veracity of the circumstances of the Court then having to have photostat copies. We now are at a different stage. It is a stage at which those documents must now be produced in Court as exhibits. And the rules are clear. It must be a witness who must have had possession of the documents that are sought to be produced. I said in my ruling of the 12th December 1995 I was convinced that Mr. Lenono dealt with the documents by way of having produced the photostat copies from the originals. I do not see how other than having met these photostat copies in Court during trial Mr. Nkune (PW 12) can be said, I do not see how Mr. Nkune, in terms of any rules, can be entitled to produce the documents as exhibits other than testify his way of comparing those to the originals that he handled and exhibited at the P.E. by way of remembering or recalling from his memory how the originals looked like. All that I "may" end up being convinced about is that Mr. Nkune told the truth when he said these photostat copies of cheques and payment vouchers seem to be copies of those originals he handed in at the P.E. But that does not entitle him to produce photostat copies as exhibits. There must be another witness to do that. But not MR. Nkune. There must be another witness to hand in these photocopies.

To the extent that the defence objected to Mr. Nkune handing in the documents as their submissions are correct. The Crown must find someone who can hand in the photostat copies. My suspicion is that it is Mr. Lenono who must do it. The woman about the Chief Magistrate or one of his officials (PW 2 and PW 3) does not answer the problem as to the origin of the photostat copies which is the central issue. How did the photostat

copies come about? I may have believed that MR. Lenono was the one who delivered the copies to the Clerk of Court. But that was a difficult inquiry. The person who answered the question as to how the photostat copies came about is the person who must hand them in. Unfortunately it is Mr. Lenono. How he goes about it I cannot advise. He is available.

The rules would not allow production of the documents by Mr. Nkune even if there be those excused or explanations which I have already believed.

Speaking about Mr. Lenono as Crown Counsel however, it is not unheard of for a public prosecutor to act as a witness on some occasions.

The application/objection succeeds. Mr. Nkune will be cross examined about other all issues over other exhibits that he will be entitled to hand in but not the disputed IDS. He will be cross examined over the value of whatever evidence he has put in. But he should not go as far as to put in the photostat copies of the disputed IDs which are not originals.



T. MONAPATHI
JUDGE

28th June 2000

For Crown : Mr. M. Lenono

For Accused : Mr. T. Mahlakeng

If one gets a photostat copy there must be an explanation why the original is not available to the Court. And the law of evidence allows so many circumstances which are in themselves valid excuses for non-production or inability to produce originals. It may be that the original was lost or destroyed or it is being withheld for a bad or good reason. And that is the kind of explanation along either line, that we expected Mr. Nkune to have been given at the bank. It may be that evidence is recorded in the proceedings excepting for my inattentiveness and bad recording. But Counsel could have reminded me in either case. For example Mr. Pitso could have said to Mr. Nkune "Please have this photostat copy but the original is at the Treasury Department." Mr. Pitso could have said so. This perforce the witness has to testify to in order to make the document (Exhibit "A") more weighty than it would otherwise be.

I allow Exhibit "A" to be put in as an Exhibit for the sole purpose of showing that Mr. Nkune got it at the bank. I appreciate that it is similar to Exhibit "D" and this Mr. Nkune confirmed. He further said that he got documents from the Treasury Department and one of them was Exhibit "D" which was similar to and was an original of Exhibit "A". They appeared to be one document but for the purpose of production they are different.



T. MONAPATHI
JUDGE

4th September 2000

For Crown : Mr. M. Lenono

For Accused : Mr. T. Mahlakeng